Supreme Court, U.S.
FILED

02 329 AUG 28 2002

OFFICE OF THE CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES

DAVID A. MONTS,
Petitioner

vs.

BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AGRICULTURAL AND MECHANICAL COLLEGE D/B/A UNIVERSITY OF NEW ORLEANS, PATRICK M. GIBBS, FRANK H. SCHAMBACH, AND GUSTAVE S. CANTRELL,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

Jack E. Morris
Counsel of Record
Attorney at Law
4051 Veterans Boulevard
Suite 208
Metairie, Louisiana 70002
Telephone: (504) 454-2769
Facsimile: (504) 454-3855

Counsel for Petitioner

38pp

QUESTION PRESENTED

Whether a professional engineer's communications to his state government employer and its attorneys, such as reports of fire and safety code violations and the unauthorized practice of engineering, are protected free speech under the First and Fourteenth Amendments to the United States Constitution.

PARTIES TO THE PROCEEDING

The parties to the proceeding in the Louisiana Supreme Court were:

- David A. Monts, petitioner;
- Board of Supervisors of Louisiana State University and Agricultural and Mechanical College d/b/a University of New Orleans, respondent;
- Patrick M. Gibbs, respondent;
- Frank H. Schambach, respondent;
- Gustave S. Cantrell, respondent;

The following filed an *amicus curiae* brief in the Louisiana Supreme Court:

- National Society of Professional Engineers; and
- Louisiana Engineering Society.

TABLE OF CONTENTS

Page

Question Presented i

Parties to the Proceeding ii

Table of Contents iii

Table of Authorities v

Opinions Below 1

Jurisdiction 1

Constitutional and Statutory Provisions Involved 2

Statement of the Case 3

Reasons for Granting the Petition 11

Conclusion 30

Appendix (bound separately)

Appendix A: *Monts v. Board of Supervisors of L.S.U.*, 2002-0926 (La. 5/31/02), 817 So.2d 105 ..... A-1

Appendix B: *Monts v. Board of Supervisors of L.S.U.*, 2001-1497 (La. App. 4 Cir. 2/27/02), 812 So.2d 787, 164 Ed. Law Rep. 500 ..... A-2

Appendix C: Trial Court Judgment A-10

Appendix D: Trial Court Reasons for Judgment A-12

Appendix E: Constitutional and Statutory Provisions Involved A-22

Appendix F: Affidavit of David A. Monts, P.E. (including Exhibits A through C) A-28

Appendix G: Affidavit of John M. Ehlers, P.E. A-84

Appendix H: Affidavit of Allan W. Anderson, P.E. A-90

Appendix I: Termination letter dated July 15, 1996 ..... A-94

TABLE OF AUTHORITIES

Page

Constitutional Provisions

U.S. Const. Amend. I ... i, 2, 7-17, 20, 23-25, 27-28, 30

U.S. Const. Amend. XIV .... i, 2, 7, 9, 13, 16, 18, 29-30

Statutes

28 U.S.C. § 1257(a) 1

42 U.S.C. § 1983 ..... 1, 2, 7, 8, 9

La. R.S. 40:1721 *et seq.*, Louisiana Building Code for State Owned Buildings Law 2, 19, 25

La. R.S. 37:681 *et seq.*, Louisiana Registration Law for Professional Engineers and Land Surveyors 2, 22

LAC 46:2101 *et seq.*, Rules of Professional Conduct for Professional Engineers and Land Surveyors 2, 21

Cases

Bond v. Floyd, 385 U.S. 116, 87 S.Ct. 339, 17 L.Ed.2d 235 (1966) 24

Brown v. Texas A&M Univ., 804 F.2d 327, 329 (5th Cir. 1986) 20

Conaway v. Smith, 853 F.2d 789 (10th Cir. 1988) 20, 24, 28

Connick v. Myers, 461 U.S. 138, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983) 14, 15, 26-29

Coughlin v. Lee, 946 F.2d 1152 (5th Cir. 1991) 8, 10

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 43 L Ed 2d 328, 95 S Ct 1029 (1975) 26

Feldman v. Philadelphia Housing Authority, 43 F.3d 823, 827-28 (3rd Cir. 1994) 21

Harris v. Victoria Indpt. Sch. Dist., 168 F.3d 216, 219 (5th Cir. 1999) 21

Frazier v. King, 873 F.2d 820, 822 (5th Cir. 1989) 21

Givhan v. Western Line Consol. Sch. Dist., 439 U.S. 410, 99 S.Ct. 693, 58 L.Ed.2d 619 (1979) 11, 12, 15, 16, 20, 23, 27, 30

Holder v. City of Allentown, 987 F.2d 188, 191 (3rd Cir. 1993) 21

Mt. Healthy City Bd. of Ed. v. Doyle, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977) 14, 15, 20

National Soc. of Prof. Eng. v. United States, 435 U.S. 679, 98 S.Ct. 1335, 55 L.Ed.2d 637 (1978) 25

New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964) 24

Pickering v. Board of Education, 391 U.S. 563, 20 L.Ed. 2d 811, 88 S.Ct. 1731 (1968) 11, 14, 20, 24, 25, 26

Price v. Brittain, 874 F.2d 252 (5th Cir. 1989) 14

Rankin v. McPherson, 483 U.S. 378, 97 L.Ed.2d 315, 107 S.Ct. 2891 (1987) 13-15, 20, 23, 24, 27, 29

Rookard v. Health and Hosps. Corp., 710 F.2d 41, 46 (2d Cir. 1983) 20

Thompson v. City of Starkville, 901 F.2d 456, 457 (5th Cir. 1990) 21

OPINIONS BELOW

The Order of the Supreme Court of Louisiana denying petitioner's application for writs of certiorari, mandamus, or review in *Monts v. Board of Supervisors of L.S.U., et al.* is reported at 2002-0926 (La. 5/31/02), 817 So.2d 105, and is reprinted in Appendix A at page A-1.

The opinion of the Louisiana Fourth Circuit Court of Appeal in *Monts v. Board of Supervisors of L.S.U., et al.* is reported at 2001-1497 (La. App. 4 Cir. 2/27/02), 812 So.2d 787, 164 Ed. Law Rep. 500, and is reprinted in Appendix B at page A-2.

The Judgment and Reasons for Judgment of the Civil District Court for the Parish of Orleans, State of Louisiana in "David A. Monts vs. Board of Supervisors of L.S.U., et al.," No. 97-12325, Div. "D," are not reported, but are reprinted in Appendix C at page A-10 and Appendix D at page A-12, respectively.

JURISDICTION

The Supreme Court of Louisiana rendered its decision denying petitioner's application for writs of certiorari, mandamus, or review on May 31, 2002. Petitioner filed a motion for reconsideration in the Louisiana Supreme Court on June 14, 2002, but a motion for reconsideration of a denial of an application for a writ is discretionary and does not extend the time for filing a petition for certiorari in this Court, and as of this date the Louisiana Supreme Court has not issued a ruling on petitioner's motion for reconsideration.

Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(a) to review the decision of the Supreme Court of Louisiana, the highest court of Louisiana in which a decision could be had, in this suit for redress under 42 U.S.C. § 1983 for violation of petitioner's right to freedom of speech under the First and Fourteenth Amendments to the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This petition for certiorari involves the following federal constitutional and statutory provisions, pertinent portions of which are reprinted in Appendix E: U.S. Const. Amend. I (Append. E, p. A-22); U.S. Const. Amend. XIV (Append. E., p. A-22); 42 U.S.C. § 1983 (Append. E., p. A-22).

This petition for certiorari involves the following state statutes and regulations, pertinent portions of which are also reprinted in Appendix E: La. R.S. 40:1721 *et seq.*, Louisiana Building Code for State Owned Buildings Law (Append. E, p. A-22); La. R.S. 37:681 *et seq.*, Louisiana Registration Law for Professional Engineers and Land Surveyors (Append. E, p. A-24); LAC 46:2101 *et seq.*, Rules of Professional Conduct for Professional Engineers and Land Surveyors (Append. I, p. A-26).

STATEMENT OF THE CASE

Background

From January 7, 1991 to July 15, 1996, petitioner David A. Monts ("Monts") was employed as an Electrical Engineer in the Department of Physical Plant Services ("PPS") of the University of New Orleans ("UNO"), a Louisiana public university governed by respondent Board of Supervisors of Louisiana State University and Mechanical College ("Board of Supervisors"). During that time, the Director of PPS was respondent Frank H. Schambach ("Schambach"), who reported to the Vice Chancellor for Business Affairs, respondent Patrick M. Gibbs ("Gibbs"). Initially, respondent Gustave S. Cantrell ("Cantrell") was the Assistant Director of PPS under Schambach, but beginning in about October 1991, Schambach unofficially divided responsibility in PPS between Cantrell, a civil engineer whom Schambach placed in charge of "Capital Outlay Projects," and John Michael Parnon ("Parnon"), a licensed architect whom Schambach placed in charge of "Special Projects" and who, in September 1995, acquired the official title of "Manager of Facility Renovations and Design."

Monts reported directly to Parnon during most of the period of his employment.

At the time UNO hired Monts in January 1991, Monts's qualifications included a Bachelor of Science degree in Physics and Chemistry from Eastern Illinois University in 1969; a Master of Science degree in Nuclear Engineering from the University of Illinois in 1971; completed course work for a Ph.D. degree in Nuclear Engineering at the University of Illinois in 1972-73; course work in electrical technology at Central Virginia Community College in 1975-77; completed power course work in electrical engineering at the University of Virginia in 1978-80; registration in Virginia as a Professional Engineer in Nuclear Engineering in 1975; registration in Louisiana as a Professional Engineer in Electrical Engineering in 1983; and approximately fifteen years of work experience in nuclear and electrical engineering.

Whistleblowing

During his employment at UNO, Monts attempted to expose government misconduct perpetrated by his nominal superiors on the UNO campus. These nominal superiors were Monts's higher supervisors, respondents Gibbs, Schambach, and Cantrell, and not his direct supervisor, Parnon. Monts made serious charges against respondents to UNO's attorneys and requested a complete independent investigation of his charges. UNO's attorneys encouraged Monts to reveal all he knew about the operations of PPS.[1]

The most serious charges Monts made to UNO's attorneys were: (1) Schambach practiced architecture and engineering without a license and allowed other unlicensed persons, including Cantrell, to practice architecture and engineering, and this practice jeopardized the health and safety of the public; (2) Schambach and Cantrell failed to take corrective action concerning fire, electrical, and building code violations, and this practice jeopardized the health and safety

---

[1] See the affidavit of Monts and accompanying exhibits (Append. F, p. A-28).

of the public; (3) Gibbs and Schambach did not comply with State bid law; and (4) Gibbs and Schambach did not comply with State hiring law. Monts had direct evidence supporting charges (1) and (2), which were matters within his expertise as a licensed professional electrical engineer.

The evidence shows that respondents knew Monts was going to the UNO attorneys, knew of the complaints Monts was making about their unlawful and improper acts, and, more importantly, knew Monts was requesting the attorneys to launch an investigation to determine the extent of the misconduct. To silence Monts and prevent an investigation, respondents terminated Monts's employment on July 15,1996, stating that Monts was "disruptive at weekly staff meetings" and that Monts had a "negative attitude with regards to your employment" (Append. I, p. A-94). Later, in answers to interrogatories, respondents added another purported reason for firing Monts: Monts "attempted to cause disruption in the workplace when he copied the salaries of his co-workers from the Library and distributed the information within the Department." No investigation into Monts's allegations was ever conducted either before of after Monts's termination.

The contention that Monts was fired because of his whistleblowing activities is supported by the following facts:

- The unlawful and improper acts were witnessed and corroborated by two other professional engineers, Anderson and Ehlers.[2]
- Monts's termination prevented an investigation of his charges, and thus a cover-up of respondents' activities was assured.
- Contrary to respondents' denials that they knew of the meetings between Monts and the UNO attorneys until after Monts was fired, the following evidence demonstrates otherwise:

---

[2] See the affidavits of Ehlers (Append. G, p. A-84) and Anderson (Append. H, p. A-90).

- The UNO attorneys sent billing statements to respondent Gibbs naming Monts as the UNO client and charging UNO for over 30 hours of legal services related to Monts.

- In depositions, the UNO attorneys have taken the position that "Mr. Monts was not a client. The University was the client." Additionally, respondents have asserted the attorney-client privilege with respect to communications between the UNO attorneys and UNO about Mr. Monts.

- The UNO attorneys have an ethical and legal obligation to report their activities to their client, UNO.

- One of the UNO attorneys, David Korn, telephoned Monts on July 17, 1996, two days after Monts was fired and two days before a third meeting between Monts and the attorneys was scheduled to take place on July 19, 1996. During the telephone conversation, Korn stated that because Monts was on "administrative leave" there was the possibility of the UNO Attorneys having to represent UNO in the matter, therefore the attorneys believed it best to cancel the July 19, 1996 meeting. This fact demonstrates the UNO attorneys were aware of Monts's firing, which included a thirty-day "administrative leave." Thus, respondents were in communication with the UNO attorneys about the matters which Monts brought to their attention.

- Parnon, Monts's immediate supervisor, had direct knowledge of Monts's meetings with the UNO attorneys because Parnon gave Monts permission to leave work to attend the meetings, Parnon assisted Monts in preparing materials for use at the meetings, and Monts told Parnon about the results of the meetings.

- Schambach, who was Parnon's immediate supervisor, knew of the meetings because Parnon testified he "may have" mentioned the meetings to Schambach, and also because prior to Monts's termination, Ehlers overheard Schambach angrily telling someone on the telephone,"Dave went to go see an attorney!"

- Gibbs knew of the meetings because the UNO attorneys sent their billing statements to Gibbs.

- At Parnon's departmental meetings the subject of Monts's meetings with the UNO attorneys was discussed. Thus, in addition to Parnon, Schambach, and Gibbs, numerous other UNO and PPS employees knew about the meetings.

• The reasons respondents give for firing Monts are pretextual as shown by the following facts in evidence:

- When questioned in depositions, respondents Cantrell, Schambach and Gibbs could not identify a single specific incident or produce a single document where Monts was either "disruptive" or demonstrated a "negative attitude." In fact, Cantrell admitted he never witnessed Monts's "negative attitude with regard to his employment." On the other hand, Anderson and Ehlers state that "Monts never 'disrupted' a departmental meeting in any way or otherwise interfered with his co-workers' performance of their duties," and further that "Monts was never reprimanded, counseled, or otherwise disciplined for his behavior or performance . . . nor did Monts's behavior ever warrant a reprimand, counseling, or discipline."

- The salary/staffing issue is a red herring. In about October 1994, Parnon placed Monts in charge of interviewing applicants for the position vacated by electrical engineer Anderson. After a series of qualified engineers rejected offers for the position because of the low salary offered, Monts researched and copied by hand an excerpt from the "UNO 1995-96 Budget," including employee salary and merit increase information, from the public record in the UNO library. Shortly thereafter, in December 1995, at a weekly staff meeting called by Parnon, Parnon and his staff addressed the staffing issues of his group and it was again noted that a replacement for Anderson still had not been found mainly because of the low salary offered. At that time, Monts mentioned that he had researched the UNO and PPS budget and salary information from the UNO library, and Monts provided copies to Parnon and three members of his staff at their request. The incident was raised by Alan Heintzen (UNO-PPS Manager, Administration and Training) at the pretermination hearing on July 15, 1996 when Heintzen asked

why Monts gave members of the UNO-PPS staff copies of the annual salary of various UNO employees. The issue was briefly discussed by Monts, Schambach, and Parnon, but as Parnon had approved of the distribution of the budget and salary information and the incident occurred long before in December 1995, all parties were satisfied that this issue was of no importance. That the issue had so little impact and was dismissed as irrelevant is demonstrated by the fact that later on the same day of the pretermination hearing (July 15, 1996), the termination letter was written and this issue is not even mentioned in the letter. On the same day, Schambach was upset that Monts did not resign, but instead required Schambach to fire Monts. If Schambach thought he could use this issue against Monts, most certainly, given his attitude on July 15, 1996, he would have raised the issue in the termination letter. The issue was again introduced only in an answer to an interrogatory two years after Monts's termination and over two and a half after the incident occurred.

- Schambach, Cantrell, Parnon, Anderson and Ehlers all agree that Monts's electrical engineering work was excellent.

- Monts had no previous warning that he would be disciplined, let alone terminated, and was given no second chance to improve his performance by Schambach at the pretermination hearing. This indicates that the UNO administrators were in a hurry to remove Monts.

- Respondents have not produced any evidence that Monts's speech disrupted the efficient functioning of UNO or PPS.

State Court Proceedings

On July 14, 1997, Monts filed suit against respondents the Board of Supervisors d/b/a UNO, Gibbs, Schambach, and Cantrell in the Civil District Court for the Parish of Orleans, State of Louisiana for redress under 42 U.S.C. § 1983 for

violating his right to freedom of speech secured by the First and Fourteenth Amendments to the U.S. Constitution.[3]

Specifically, in the Civil District Court for the Parish of Orleans, State of Louisiana, Monts alleged the following in Paragraph IX of his "Petition for Damages":

> Acting under color of State law, the defendants jointly, intentionally and willfully deprived the plaintiff of his constitutional and Federal law rights and privileges including but not limited to the right to free speech as protected by the First Amendment of the Constitution of the United States and whose unlawful actions were in violation of 42 U.S.C Sections 1983 and 1985.

The state district court granted respondents' motion for summary judgment and dismissed Monts's First Amendment retaliation claim in a Judgment dated May 9, 2001 (Append. C, p. A-10), reasoning as follows in its Reasons for Judgment (Append. D, p. A-12):

> Plaintiff alleged that he was wrongfully discharged in retaliation for exercise of his First Amendment rights of free speech. To make a claim under the First Amendment, a plaintiff must establish that his speech was "protected", such that it was a matter of public concern warranting First Amendment protection. In addition, the "employee must demonstrate that his protected conduct was a substantial motivating factor in his discharge." *Coughlin v. Lee*, 946 F.2d 1152 (La. App. 5th Cir. 1991). In

---

[3] Monts asserted various other causes of action under state law but expressly and voluntarily abandoned them in the state district court and on appeal.

> this case the substantial motivating factor in plaintiff's discharge was his disruptive behavior, negative attitude and divisive actions in disseminating information concerning the salaries of co-employees and his superiors. The Court found that although the First Amendment may have protected plaintiff's speech, his actions clearly justified his termination.

(Append. D, p. A-20).

In the Louisiana Fourth Circuit Court of Appeal, Monts asserted and argued the following assignment of error in his original brief filed on September 24, 2001:

> The Trial Court erred in granting defendants' motion for summary judgment dismissing Mr. Monts's claims for wrongful discharge in violation of U.S. Const. Amends. I and XIV and 42 U.S.C. § 1983.

Monts also specified and addressed the following issue in his brief to the court of appeal:

> Whether Mr. Monts's speech addressed matters of public concern.

In an opinion issued on February 27, 2002 (Append. B, p. A-2), the Louisiana court of appeal addressed the federal constitutional issue as follows:

> In the instant case, review of the alleged code violations with which Monts was concerned--if they were code violations at all--cannot be said to be major matters of public safety. Monts complained of wire size, plumbing, and leveling issues and the like. It would not appear that, even if they were

> present, these seemingly minor deviations from the purest building practices suggest great threat to the public health and safety. The four instances of allegedly 'protected speech' that Monts cites signify his dissatisfaction in his workplace, and are not matters sufficiently infused with public interest to support his First Amendment retaliation claim. Additionally, the context and form of Monts's expression militate against the finding that he was addressing matters of public concern as a citizen, rather than as a disgruntled employee. With the exception of the communication with [defendants'] counsel (of which defendants were allegedly unaware), all of Monts's complaints, either verbal or in memoranda, were internal and more specifically, internal within the Physical Plant Services Department. He made no complaints to other UNO officials, nor did he report the purported misconduct to the State Board of Ethics, which, as explained in the Staff Handbook, he had the full right to do. Accordingly, it is apparent that Monts's internal complaints were not primarily matters of public concern, and thus, not protected speech. As such, under *Coughlin* [*v. Lee*, 946 F.2d 1152 (5th Cir. 1991)], we need not address any of the other issues presented by plaintiff, since without protected speech, there can be no violation of the First Amendment. This assignment of error lacks merit.

(Append. B, p. A-8).

In the Louisiana Supreme Court, Monts asserted and argued the following assignment of error in his application for writs of certiorari, mandamus, or review filed on March 28, 2002:

The Court of Appeal erred as a matter of law in deciding that Mr. Monts's communications "were not primarily matters of public concern, and thus, not protected speech" under the First Amendment to the U.S. Constitution.

The Louisiana Supreme Court denied Monts's writ application without opinion in an Order issued on May 31, 2002 (Append. A, p. A-1).

REASONS FOR GRANTING THE PETITION

Introduction

This Honorable Court should grant certiorari in this case because the state court has decided a federal constitutional question in a way that conflicts with applicable decisions of this Court. Specifically, the Louisiana court of appeal's decision that Monts' communications to respondents and respondents' attorneys "are not matters sufficiently infused with public interest to support his First Amendment retaliation claim" and that "Monts' internal complaints were not primarily matters of public concern, and thus, not protected speech" conflicts with this Court's decisions that "statements by public officials on matters of public concern must be accorded First Amendment protection despite the fact that the statements are directed at their nominal superiors," *Pickering v. Board of Education*, 391 U.S. 563, 574, 20 L.Ed. 2d 811, 88 S.Ct. 1731, 1737 (1968), and that "Neither the Amendment itself nor our decisions indicate that this freedom is lost to the public employee who arranges to communicate privately with his employer rather than to spread his views before the public." *Givhan v. Western Line Consol. Sch. Dist.*, 439 U.S. 410, 416, 99 S.Ct. 693, 696, 58 L.Ed.2d 619 (1979).

Limited Issue of Federal Constitutional Law

This petition for certiorari does not raise issues relating to the factual merits of respondents' motion for summary judgment, which issues the Louisiana court of appeal did not reach. The only issue presented to this Court is a threshold

issue of constitutional law: whether Monts's communications to respondents and their attorneys addressed matters of public concern within the ambit of First Amendment protection. Monts's communications involved reports of fire and safety code violations, the unauthorized practice of engineering, and other unlawful and improper acts on the campus of a public university, and there is no dispute that Monts engaged in such communications. The only disputed issue of fact--the issue the Louisiana court of appeal did not reach--is whether Monts's communications motivated respondents' termination of him. So were this Court to review the state court's limited decision and decide that Monts's communications are entitled to First Amendment protection, this Court would not then be called upon to decide the factual issue of motivation. Rather, this Court need only remand the matter back to the Louisiana Supreme Court for decision on the merits of respondents' summary judgment motion in light of this Court's decision on the issue of federal constitutional law. *Cf. Givhan*, 439 U.S. at 413, 58 L.Ed.2d at 623 (remanding to the Court of Appeals "so that it may consider the contentions of the parties freed from this erroneous view of the First Amendment").

Chilling Effect of the State Court Decision

Whereas respondents effectively silenced the speech of Monts alone, the Louisiana court of appeal's decision will chill the speech of all professional engineers and architects. Under the Louisiana court of appeal's decision in this case, *Monts v. Board of Supervisors* (Append. B, p. A-2), a professional engineer or architect can be terminated at will for complaining about his or her non-technical supervisor's "tendency to overrule or ignore the recommendations of design professionals on issues of architectural and engineering design." And even though the fire and safety codes do not distinguish between "major" and "minor" code violations, under the Louisiana court of appeal's decision in *Monts* a professional engineer or architect can be terminated at will if he reports code violations which his non-technical employer unilaterally deems to be "seemingly minor deviations from the purest building practices" (Append. B, p. A-8). Furthermore, unless a professional engineer or architect

communicates his complaints publicly, rather than privately to his employer or his employer's attorneys, under the Louisiana court of appeal's decision in *Monts* that professional engineer or architect can be terminated at will on the grounds that "all of [his or her] complaints, whether verbal or in memoranda, were internal" (Append. B, p. A-8). As the National Society of Professional Engineers and the Louisiana Engineering Society pointed out in their *amicus curiae* brief to the Louisiana Supreme Court, the court of appeal's decision places all professional engineers and architects--not just Monts--in an intolerable position. After all, the law did not protect David A. Monts, P.E. when he spoke out about what he believed to be engineering design practices which jeopardized the public health, safety, welfare and property, so why should other professional engineers or architects with similar concerns think the law would protect them? Best to keep quiet.

Legal Standard

In reviewing summary judgment, the court must view the evidence presented in light most favorable to the party opposing the motion. *Rhodes v. Guiberson Oil Tools*, 75 F.3d 959 (5th Cir. 1996). In *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 147, 120 S.Ct. 2097, 2110, 147 L.Ed.2d 105 (2000), this Court unanimously reaffirmed that "the standard for granting summary judgment 'mirrors' the standard for judgment as a matter of law, such that the inquiry under each is the same." *Id.* at 2110. This Honorable Court held that, although all of the evidence should be reviewed by the court, not all evidence should be given weight; rather, the court "must disregard all evidence favorable to the moving party that the jury is not required to believe. That is, the court should give credence to the evidence favoring the nonmovant as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that evidence comes from disinterested witnesses.'" *Id.* at 2110 (citation omitted). In the present case, Monts presented evidence that, when taken as a whole, established as a matter of law that his communications to respondents and their

attorneys addressed matters of public concern protected by the First and Fourteenth Amendments.

This Court has observed that "It is clearly established that a State may not discharge an employee on a basis that infringes that employee's constitutionally protected interest in freedom of speech." *Rankin v. McPherson*, 483 U.S. 378, 383, 97 L.Ed.2d 315, 324, 107 S.Ct. 2891 (1987). This is true "[e]ven though [the employee] could have been discharged for no reason whatsoever . . . ." *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U.S. 274, 283, 97 S.Ct. 568, 50 L.Ed.2d 471, 481 (1977). "[S]tatements by public officials on matters of public concern must be accorded First Amendment protection despite the fact that the statements are directed at their nominal superiors" because "the threat of dismissal from public employment is . . . a potent means of inhibiting speech." *Pickering*, 391 U.S. at 574, 88 S.Ct. at 1737. The jurisprudence recognizes "our society's strong interest in protecting public employees who have the courage to 'blow the whistle' on wrongdoings in public institutions." *Price v. Brittain*, 874 F.2d 252, 256-57 (5th Cir. 1989). Thus, "[v]igilance is necessary to ensure that public employers do not use authority over employees to silence discourse, not because it hampers public functions but simply because superiors disagree with the content of the employees' speech." *Rankin*, 483 U.S. at 384, 97 L.Ed.2d at 324.

"Whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record." *Connick v. Myers*, 461 U.S. 138, 147-48, 103 S.Ct. 1684, 75 L.Ed.2d 708, 720 (1983). Speech addresses a matter of public concern when it can be "fairly considered as relating to any matter of political, social, or other concern to the community . . . ." *Id.* at 146, 75 L.Ed2d at 719. "The inquiry into the protected status of speech is one of law, not fact." *Connick*, 461 U.S. at 148 n.7, 75 L.Ed.2d at 720 n. 7.

As stated in *Pickering*, 391 U.S. at 568, 88 S.Ct. at 1734-35, "The problem in any case is to arrive at a balance between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as

an employer, in promoting the efficiency of the public services it performs through its employees." In what has become known as the *Pickering/Connick* balancing test, "the State's burden in justifying a particular discharge varies depending upon the nature of the employee's expression." *Connick v. Myers*, 461 U.S. 138, 150, 103 S.Ct. 1684, 75 L.Ed.2d 708, 722 (1983). Thus, "a stronger showing may be necessary if the employee's speech more substantially involved matters of public concern." *Id.* at 154, 75 L.Ed.2d at 724. In any event, a public employee does not forfeit "his protection against governmental abridgement of freedom of speech if he decides to express his views privately rather than publicly." *Givhan*, 439 U.S. at 414. *See also Rankin*, 483 U.S. at 386 n.11 ("The private nature of the statement does not . . . vitiate the status of the statement as addressing a matter of public concern").

Matters of Public Concern

In the present case, Monts's reports of information involving fire and safety code violations, the unauthorized practice of engineering, and other unlawful acts committed and permitted by respondents on the UNO campus clearly and substantially relate to matters "of political, social, or other concern to the community." *Connick*, 461 U.S. at 146, 75 L.Ed2d at 719. Furthermore, as shown herein, an examination of the "content, form, and context" of Monts's communications, "as revealed by the whole record," *id.* at 147-48, 75 L.Ed.2d at 720, confirms that the Louisiana court of appeal construed the First Amendment much too restrictively in deciding that Monts's communications "and are not matters sufficiently infused with public interest to support his First Amendment retaliation claim" and that "Monts' internal complaints were not primarily matters of public concern, and thus, not protected speech" (Append. B, p. A-8).

Significantly, as a result of the Louisiana court of appeal's erroneous resolution of the "public concern" issue, the court did not address "any of the other issues presented by plaintiff, since without protected speech, there can be no violation of the First Amendment" (Append. B, p. A-9). In particular, the court did not reach the issue of whether

Monts's protected speech "was a 'substantial factor'–or, to put it in other words, that it was a 'motivating factor'" in respondents' decision to terminate Monts, *Mt. Healthy*, 429 U.S. at 287, 50 L.Ed.2d 484, and no trier of fact has yet decided the issue of motive or the ancillary issue of pretext. *See Reeves v. Sanderson Plumb. Prod., Inc.*, 530 U.S. 133, 147, 120 S.Ct. 2097, 2108-09, 147 L.Ed.2d 105 (2000) ("In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose").

Thus, the sole issue presented to this Court is whether Monts's reports of fire and safety code violations, the unauthorized practice of engineering, and other unlawful acts committed and permitted by respondents addressed matters of public concern protected by the First and Fourteenth Amendments to the U.S. Constitution. And again, were this Court to review this limited issue of federal constitutional law and decide that any of Monts's communications addressed matters of public concern within the ambit of First Amendment protection, then this Court, as it did in *Givhan*, 439 U.S. at 413, 58 L.Ed.2d at 623, need only remand the matter to the Louisiana Supreme Court "so that it may consider the contentions of the parties freed from this erroneous view of the First Amendment."

Content, Form, and Context

The Louisiana court of appeal identified "at least four contexts" in which "Mr. Monts alleges that he engaged in protected speech":

> First, he complained at Mr. Parnon's staff meetings about Mr. Schaumbach's and Mr. Cantrell's tendency to overrule or ignore the recommendations of design professionals on issues of architectural and engineering design, and their tendency to implement architectural and engineering design projects without complete review by a design professional. Further, he researched and copied from the

> public record in the UNO library an excerpt from the "UNO 1995-96 Budget," including salary and merit increase information, and made photocopies of the information for four of his colleagues, including Parnon, at their request. Additionally, he reported to Mr. Schaumbach his belief that Mr. Cantrell "has used his position of power to push through projects of special interest to the campus VIPs, especially his boss's boss, Pat Gibbs," and other complaints about Mr. Cantrell's abusive and harassing conduct. Finally, he reported to UNO's attorneys at Phelps Dunbar a host of "problems which needed to be addressed" regarding design standards and code enforcement during two face-to-face meetings with those attorneys.

(Append. B, p. A-7) (footnotes omitted).

With respect to the *content* of Monts's speech, the court of appeal concluded:

> The four instances of allegedly "protected speech" that Monts cites signify his dissatisfaction in the workplace, and are not matters sufficiently infused with public interest to support his First Amendment retaliation claim.

(Append. B, p. A-8). The court of appeal also concluded that "the *context* and *form* of Monts's expression militate against the finding that he was addressing matters of public concern as a citizen, rather than as a disgruntled employee" (Append. B, p. A-8) (emphasis added), reasoning as follows:

> With the exception of the communication with [defendants'] counsel (of which defendants were allegedly unaware), all of Monts'

> complaints, either verbal or in memoranda, were internal and more specifically, internal within the Physical Plant Services Department. He made no complaints to other UNO officials, nor did he report the purported misconduct to the State Board of Ethics, which, as explained in the Staff Handbook, he had the full right to do. Accordingly, it is apparent that Monts' internal complaints were not primarily matters of public concern, and thus, not protected speech.

(Append. B, p. A-8).

As shown herein, an examination of the content, form, and context of each of these four categories of speech compels the conclusion that Monts's communications plainly involved matters of public concern protected by the First and Fourteenth Amendments, and the Louisiana court of appeal, sanctioned by the Louisiana Supreme Court, erred as a matter of federal constitutional law in holding otherwise.

First and Fourth Categories of Speech

In the first category of speech at issue, Monts "complained at Mr. Parnon's staff meetings about Mr. Schaumbach's and Mr. Cantrell's tendency to overrule or ignore the recommendations of design professionals on issues of architectural and engineering design, and their tendency to implement architectural and engineering design projects without complete review by a design professional" (Append. B, p. A-7). In the fourth category, Monts reported similar concerns to UNO's attorneys at Phelps Dunbar, including "a host of 'problems which needed to be addressed' regarding design standards and code enforcement" (Append. B, p. A-8).

As set forth by Monts in his affidavit (Append. F, p. A-28),[4] some of the fire and safety code violations in various

---

[4] See also the affidavits of Ehlers (Append. G, p. A-84) and Anderson (Append. H, p. 90), each describing specific instances in which the decisions of UNO officials, namely defendants Schambach and Cantrell, adversely affected the safety and economy of engineering designs for

campus buildings which Monts reported at Parnon's staff meetings and to respondents' attorneys included "No fire alarm system facilities," "No lighted exit signs," "4' X 4' cover is off a section of the power distribution center exposing 'live' electrical parts," "No overcurrent protection for secondary side of transformer provided," "Improper (smaller) wire size used," "Disconnect not labeled," and "Ground wire not in conduit with the A/C conductors." The "Code" Monts cites is the *Louisiana Building Code*, which the Louisiana Legislature adopted in the *Louisiana Building Code for State Owned Buildings Law*, La. R.S. 40:1721 *et seq.*, "[i]n order to assure the public health and safety and to facilitate the efficient use of state funds in the new construction, alterations, additions for renovations of state buildings." La. R.S. 40:1721 (Append. E, p. A-23).

Monts also expressed the following concerns during at least two meetings with respondents' attorneys at Phelps Dunbar:

III. FHS and his boss Patrick M. Gibbs (PMG), Vice-Chancellor, Business Affairs Administration, do not comply with State bid law.

IV. FHS and PMG do not comply with State laws in hiring.

V. FHS practices architecture/engineering without a license, FHS allows other unlicensed persons to practice architecture/engineering, and this practice jeopardizes the health and safety of the public.

---

campus projects.

At the end of each meeting with respondents' attorneys, Monts "requested a complete independent investigation of the above matters."

In *Conaway v. Smith*, 853 F.2d 789, 796 (10th Cir. 1988), the Tenth Circuit observed that "Speech which discloses any evidence of corruption, impropriety, or other malfeasance on the part of city officials, in terms of content, clearly concerns matters of public import." Examples of other speech which this Court and others have held to address matters of public concern protected by the First Amendment are:

- A teacher wrote a letter to the editor of a newspaper criticizing a school board's handling of revenue proposals and allocation of financial resources between academic and athletic programs. *Pickering*, 391 U.S. at 566, 88 S.Ct. at 1733-34.
- A teacher called a radio station and communicated the substance of a school principal's memorandum regarding a teacher dress code. *Mt. Healthy*, 429 U.S. at 282, 50 L.Ed.2d 480.
- A teacher complained privately to a school principal about what she perceived to be racially discriminatory employment practices and policies. *Givhan* , 439 U.S. at 412-413, 58 L. Ed. 2d at 623.
- A clerical employee in a county constable's office remarked after hearing of an attempt on the life of the President, "If they go for him again, I hope they get him." *Rankin*, 483 U.S. at 397, 97 L.Ed.2d at 321.
- A nursing director at a municipal hospital reported corrupt and wasteful practices to a state inspector. *Rookard v. Health and Hosps. Corp.*, 710 F.2d 41, 46 (2d Cir. 1983).
- An accountant employed by a public university reported "what he thought to be a possible impropriety in the way a faculty member was handling funds." *Brown v. Texas A&M Univ.*, 804 F.2d 327, 329 (5th Cir. 1986).
- An infirmary nurse in a public correctional center reported improper nursing practices to her supervisors,

to the state Board of Corrections, and to the State Board of Nursing. *Frazier v. King*, 873 F.2d 820, 822 (5th Cir. 1989).

- A city police officer aided other city employees in filing grievances about improper promotions. *Thompson v. City of Starkville*, 901 F.2d 456, 457 (5th Cir. 1990).
- A city employee wrote a letter to the editor of a newspaper criticizing the city's residency requirement. *Holder v. City of Allentown*, 987 F.2d 188, 191 (3rd Cir. 1993).
- An internal auditor of a state agency reported favoritism and other improprieties in personnel decisions. *Feldman v. Philadelphia Housing Authority*, 43 F.3d 823, 827-28 (3rd Cir. 1994).
- A teacher criticized a school principle's performance of her duties during a faculty meeting. *Harris v. Victoria Indpt. Sch. Dist.*, 168 F.3d 216, 219 (5th Cir. 1999).

In this case, Monts disclosed to respondents and their attorneys substantial evidence of impropriety and malfeasance on the part of his superiors, including wilful disregard of fire and safety code violations, the unauthorized practice of engineering, violations of state hiring and bid laws, and other unlawful and improper acts, and these communications clearly concerned matters of public import.

Indeed, how the Louisiana court of appeal could conclude that Monts's communications merely "signify his dissatisfaction in the workplace" (Append. B, p. A-8) is not apparent from the opinion or the record. The record contains no evidence to suggest that Monts personally had anything to gain by reporting code violations to his supervisors and to UNO's attorneys. Rather, the specific content of the communications, as well as the form and context of the communications, signify that Monts reported the code violations because of his sincere professional and civic concerns about "continuing hazards to the health, safety and welfare of the public" on the UNO campus (Append. F, p. A-30).

Moreover, Louisiana's *Rules of Professional Conduct for Professional Engineers and Land Surveyors*, LAC 46:2101 *et seq.*, promulgated pursuant to the *Louisiana Registration Law for Professional Engineers and Land Surveyors*, La. R.S. 37:688, required Monts to report his concerns as follows:

> B. Registrants shall at all times recognize that their primary obligation is to protect the safety, health, property, and welfare of the public. If their professional judgment is overruled by nontechnical authority, they will clearly point out the consequences, notifying the proper authority of any observed conditions which endanger public safety and health.

LAC 46:2103(B). *See also* Rule 1 of the *National Society of Professional Engineers Code of Ethics for Engineers* (same); Rule 1 of the *Institute of Electrical and Electronics Engineers, Inc. Code of Ethics* (same); and the *National Society of Professional Engineers Engineer's Creed* (placing "the public welfare above all other considerations").

The *Louisiana Registration Law for Professional Engineers and Land Surveyors*, La. R.S. 37:682(12), further requires licensed professional engineers to be in "responsible charge" of design decisions and defines "responsible charge" as "the direct control and personal supervision of engineering work." Accordingly, § 2103(C)(3) of the *Rules of Professional Conduct for Professional Engineers and Land Surveyors* provides:

> 3. Registrants may not accept the responsibility for, nor review, revise, sign, or seal drawings when such plans are begun by persons not properly registered and qualified; or do any other act to enable either such registrants or the project owners, directly or indirectly, to evade the requirements of R.S. 37:681 through 37:703 [*Louisiana Registration*

Law for Professional Engineers and Land Surveyors].

LAC 46:2103(C)(3).

Thus, fairly considering the content of Monts's speech, the Louisiana court of appeal's decision that Monts's concerns about engineering design standards and fire and safety code enforcement "signify his dissatisfaction in his workplace" makes sense only if one accepts the court of appeal's conclusion that, considering "the context and form of Monts's expression," the "internal" nature of Monts's communications removes them from First Amendment protection (Append. B, p. A-8). But under this Court's decision in *Givhan*, 439 U.S. at 414-16, 58 L.Ed.2d at 623, the fact that Monts arranged "to communicate privately with his employer rather than to spread his views before the public" does not remove his speech from First Amendment protection. *See also Rankin*, 483 U.S. at 386, 97 L.Ed.2d at 326 n.11. Therefore, in holding that Monts's reports of concerns about engineering design standards and safety code enforcement merely "signify his dissatisfaction in the workplace" (Append. B, p. A-8), the court of appeal's express reasoning directly conflicts with decisions of this Court and is constitutionally flawed.

The Louisiana court of appeal further held that Monts's reports of code violations "are not matters sufficiently infused with public interest to support his First Amendment retaliation claim" (Append. B, p. A-8), reasoning as follows:

> In the instant case, review of the alleged code violations with which Monts was concerned--if they were code violations at all--cannot be said to be major matters of public safety. Monts complained of wire size, plumbing, and leveling issues and the like. It would not appear that, even if they were present, these seemingly minor deviations from the purest building practices suggest great threat to the public health and safety.

(Append. B, p. A-8).[5] This reasoning is likewise flawed in several respects.

First, the court of appeal's conjecture as to whether the code violations Monts reported "were code violations at all" is irrelevant to the issue of whether the content of Monts's reports dealt with a matter of public concern. "Authoritative interpretations of the First Amendment guarantees have consistently refused to recognize an exception for any test of truth--whether administered by judges, juries, or administrative officials--and especially one that puts the burden of proving truth on the speaker." *New York Times Co. v. Sullivan*, 376 U.S. 254, 271, 84 S.Ct. 710, 11 L.Ed.2d 686 (U.S. 1964). Consequently, even "erroneous statements must be protected to give freedom of expression the breathing space it needs to survive." *Bond v. Floyd*, 385 U.S. 116, 136, 87 S.Ct. 339, 17 L.Ed.2d 235 (1966) (quoted in *Rankin*, 483 U.S. at 387). Thus, in *Conaway*, 853 F.2d at 796, the Tenth Circuit upheld the protected status of Conaway's reports of "facts which *appeared* to involve . . . what he *perceived* to be improper and illegal conduct," and of "circumstances of released substandard electrical work which, he *felt*, posed danger to public life, health, and safety" (emphasis added). *See also Pickering*, 391 U.S. at 572, 88 S.Ct. at 1737 (holding teacher's "erroneous public statements" were protected speech).

Furthermore, the court of appeal cites and the record contains no technical authority or other support for the court's speculation that the code violations Monts reported were not "code violations at all," and the court's layman's opinion that the reported code violations are "seemingly minor deviations from the purest building practices" which "cannot be said to be major matters of public safety" has the effect of trivializing the building codes which the Louisiana Legislature adopted expressly "to insure the public health and safety and to

---

[5] Monts did not complain of "plumbing" issues. Monts's complaints were directed to violations of the National Electrical Code and the Life Safety Code, Standard 101. *See* La. R.S. 40:1722(B) (Append. E, p. A-23).

facilitate the efficient use of state funds in the new construction, alterations, additions for renovations of state buildings." La. R.S. 40:1721. There simply exists no authority--technical, legal, or otherwise--for the court of appeal's arbitrary classification of code violations as "minor" or "major." Likewise, there exists no authority for the court of appeal's intimation that reports of "major" code violations might be "matters sufficiently infused with public interest to support his First Amendment retaliation claim" (Append. B, p. A-8), whereas reports of "minor" code violations are not.

On the other hand, the assessment and reporting of code violations was well within the field of expertise of Monts, who at all pertinent times was a licensed Professional Electrical Engineer employed as such in the UNO Department of Physical Plant Services. As such, Monts was bound by professional, ethical, and statutory duties to report what he believed to be violations of the electrical, fire, and safety codes comprising the Louisiana Building Code. *See* La. R.S. 40:1722(B) (Append. E, p. A-23); LAC 46:2103(B) and (C)(3) (Append. E, p. A-27). Furthermore, just as this Court has recognized that "[t]eachers are, as a class, the members of a community most likely to have informed and definite opinions as to how funds allotted to the operation of the schools should be spent," *Pickering*, 391 U.S. at 572, 88 S.Ct. at 1736, so courts should recognize that professional engineers are, as a class, the members of a community most likely to have informed and definite opinions as to how the practice of engineering should be conducted to ensure the health, safety and welfare of the public. *Cf. National Soc. of Prof. Eng. v. United States*, 435 U.S. 679, 681, 98 S.Ct. 1335, 1360, 55 L.Ed.2d 637 (1978) ("Engineering is an important and learned profession.") In holding that Monts's reports of code violations are not "matters sufficiently infused with public interest to support his First Amendment retaliation claim" (Append. B, p. A-8), the Louisiana court of appeal failed to accord the opinions of a professional engineer proper weight in the First Amendment balance.

In short, in the first and fourth categories of speech identified by the court of appeal, Monts's communications clearly and substantially addressed matters of public concern, and the court of appeal, sanctioned by the Louisiana Supreme Court, erred as a matter of federal constitutional law in holding they did not.

Second and Third Categories of Speech

In the second category of speech in which Monts engaged--"he researched and copied from the public record in the UNO library an excerpt from the 'UNO 1995-96 Budget,' including salary and merit increase information, and made photocopies of the information for four of his colleagues, including Parnon, at their request" (Append. B, p. A-7)--the "content, form, and context" of Monts's communication, "as revealed by the whole record," *Connick*, 461 U.S. at 147-48, 75 L.Ed.2d at 720, shows that the communication addressed a matter of public concern. First of all, the budget and salary information was contained in the *public record* in the UNO library and reflected expenditures of *public funds*. *Cf. Connick*, 461 U.S. at 143 n.5, 75 L.Ed.2d at 717 n.5 ("The question of whether expression is of a kind that is of legitimate concern to the public is also the standard in determining whether a common-law action for invasion of privacy is present. . . . See also Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 43 L Ed 2d 328, 95 S Ct 1029 (1975) (action for invasion of privacy cannot be maintained when the subject matter of the publicity is *matter of public record*)") (emphasis added); *Pickering*, 391 U.S. at 572, 88 S.Ct. at 1736 (noting that "the amounts expended on athletics which Pickering reported erroneously were matters of *public record*") (emphasis added). Secondly, Monts's copying of the budget and salary information followed the resignations of two design professionals, Alan W. Anderson, P.E. and George Belteau, P.E., both of whom cited as reasons their low salaries, "increased work load," and "unrealistic schedule," and also followed the rejection of job offers by a series of qualified engineers because of the low salaries offered. The resignations prompted Parnon to complain in a memo to Schambach that "if Engineering is stretched too thin quality

control and life safety may be in jeopardy," and prompted Monts, at Parnon's urging, to remind Gibbs of the design professionals' "imposing responsibility of satisfying Life Safety codes through design as well as inspection of the work." Third, Monts's act of researching and copying the budget and salary information from the public record in the UNO library was in furtherance of his responsibility as the person Parnon officially placed in charge of interviewing applicants for the still-vacant Electrical Engineer position from which Anderson had resigned more than a year earlier in part because of his low salary at UNO.

Lastly, the third category of speech in which Monts engaged--reporting "to Mr. Schambach his belief that Mr. Cantrell 'has used his position of power to push through projects of special interest to the campus VIP's especially his boss's boss, Pat Gibbs,' and other complaints about Mr. Cantrell's abusive and harassing conduct" (Append. B, p. A-8)--also clearly addressed matters of public concern. Monts had no personal stake in reporting what he perceived to be Cantrell's special treatment of Gibbs and other campus officials. Furthermore, Monts did not complain "about Mr. Cantrell's abusive and harassing conduct" toward *himself* but rather toward *other* UNO employees.

And again, that Monts's communications of the public budget and salary information and complaints about Cantrell's improper, abusive, and harassing conduct were "internal and more specifically, internal within the Physical Plant Services Department" (Append. B, p. A-8) does not, contrary to the Louisiana court of appeal's express reasoning, remove those communications from First Amendment protection. *Givhan*, 439 U.S. at 414-16, 58 L.Ed.2d at 623; *Rankin*, 483 U.S. at 386, 97 L.Ed.2d at 326 n.11.

Finally, the facts of this case are quite different from the facts in *Connick*, 461 U.S. at 148, 75 L.Ed.2d at 721, in which the plaintiff, a New Orleans Assistant District Attorney, created a "mini-insurrection" in the District Attorney's office by distributing a questionnaire which reflected "one employee's dissatisfaction with a transfer and an attempt to turn that

displeasure into a cause célèbre." Even when Monts copied the excerpt of the "UNO 1995-96 Budget" and salary information from the public record in the UNO library, he did so "after working hours," gave copies to four colleagues only upon request, only in the context of a staff discussion of "design team staffing for the coming year," and only to provide those who requested it information to "evaluate the staffing and salary situation for themselves rather than relying solely on Mr. Schambach's and Mr. Gibbs' claims that the budget would not permit salary increases."

Furthermore, while the Court in *Connick* found that Meyers' questionnaire "touched upon matters of public concern in only a most limited sense" and that her "limited First Amendment interest . . . does not require that Connick tolerate action which he reasonably believed would disrupt the office, undermine his authority, and destroy close working relationships," the Court cautioned "that a stronger showing may be necessary if the employee's speech more substantially involved matters of public concern." *Id.* at 154, 75 L.Ed.2d at 724. Here, unlike Meyers' "limited First Amendment interest," *id.*, Monts's First Amendment interest "is entitled to greater weight where he is acting as a whistle blower in exposing government corruption" by reporting code violations, the unauthorized practice of engineering, and other unlawful acts affecting the health, welfare, safety, and property of the public on the UNO campus. *Conaway*, 853 F.2d at 797. To hold otherwise, as the state courts did in this case, would place design professionals like Monts in the position of having to choose between upholding their "primary" professional, ethical, and statutory duties "to protect the safety, health, property, and welfare of the public" on the one hand, LAC 46:2103(B) (Append. E, p. A-27), or on the other hand keeping their mouths shut for fear of losing their jobs.

Finally, in finding Monts spoke not as a "citizen" but as a "disgruntled employee" (Append. B, p. A-8), the Louisiana court of appeal accepted at face value respondents' proffered reasons for terminating Monts--"his continued disruption of departmental meetings, and his negative attitude to his

employment with UNO" (Append. B, p. A-4; Append. I, p. A-94). However, when questioned in depositions, the individual respondents could not identify a single specific instance in which Monts disrupted a departmental meeting, exhibited a negative attitude, or otherwise performed poorly. On the other hand, all of the design professionals, including two professional engineers and a licensed architect, who worked with Monts and attended departmental meetings with Monts confirm that respondents' characterizations of Monts are false. Clearly this is the very situation where "[v]igilance is necessary to ensure that public employers do not use authority over employees to silence discourse, not because it hampers public functions but simply because superiors disagree with the content of the employees' speech." *Rankin*, 483 U.S. at 384, 97 L.Ed2d at 324. Respondents used their authority over Monts to silence him, but thus far the courts have not exercised the necessary vigilance to ensure respondents' use of their authority was proper even though all of the evidence in the record establishes it was not.

In sum, all of Monts's communications addressed matters of public concern within the ambit of First and Fourteenth Amendment protection. In any event, while in *Connick* this Court found some of the topics of Myers' speech did not address matters of public concern, the Court nevertheless observed: "Because *one* of the questions in Myers' survey touched upon a matter of public concern, and *contributed* to her discharge we must determine whether Connick was justified in discharging Myers." *Connick*, 461 U.S. at 149, 75 L.Ed.2d at 722 (emphasis added). In finding that *none* of Monts's communications addressed matters of public concern in this case, when as a matter of federal constitutional law all of his communications addressed matters of public concern, the Louisiana court of appeal applied a constitutionally deficient legal standard to impermissibly restrict and erode the freedom of speech, and the Louisiana Supreme Court erred in failing to reverse the court of appeal's decision.

CONCLUSION

Viewing all evidence in light most favorable to Monts in accordance with the applicable standard of review of summary judgments, it could not be clearer that Monts's communications to respondents and their attorneys addressed matters of public concern protected by the First and Fourteenth Amendments. To Monts, the greatest tragedy is that the electrical and life safety code violations he reported may still exist today because respondents, their attorneys, and the Louisiana courts have stifled his speech and trivialized his concerns about code enforcement, thus allowing the continued existence of unnecessary hazards to over 18,000 students, faculty and staff on the UNO campus.

For these reasons, this Court should grant Monts's petition for a writ of certiorari to the Louisiana Supreme Court, should review and reverse the Louisiana Supreme Court's Order denying Monts's application in that court for writs of certiorari, mandamus, or review, and should remand the matter to the Louisiana Supreme Court "so that it may consider the contentions of the parties freed from this erroneous view of the First Amendment." *Givhan*, 439 U.S. at 413, 58 L.Ed.2d at 623.

Respectfully submitted,

Jack E. Morris
Counsel of Record
Attorney at Law
4051 Veterans Boulevard
Suite 208
Metairie, Louisiana 70002
Telephone: (504) 454-2769
Facsimile: (504) 454-3855

Counsel for Petitioner

(2)

Supreme Court, U.S.
FILED

No. 02 329 AUG 28 2002

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

DAVID A. MONTS,
Petitioner

vs.

BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AGRICULTURAL AND MECHANICAL COLLEGE D/B/A UNIVERSITY OF NEW ORLEANS, PATRICK M. GIBBS, FRANK H. SCHAMBACH, AND GUSTAVE S. CANTRELL,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

APPENDIX

Jack E. Morris
Counsel of Record
Attorney at Law
4051 Veterans Boulevard
Suite 208
Metairie, Louisiana 70002
Telephone: (504) 454-2769
Facsimile: (504) 454-3855

Counsel for Petitioner

96 pp

Appendix A

The Supreme Court of the State of Louisiana

David A. MONTS

vs. NO. 2002-C-0926

BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE D/B/A UNIVERSITY OF NEW ORLEANS, PATRICK M. GIBBS, FRANK H. SCHAMBACH AND GUSTAVE S. CANTRELL

IN RE: Monts, David A. ; - Plaintiff; Applying for Writ of Certiorari and/or Review, Parish of Orleans, Civil District Court Div. D, No. 97-12325; to the Court of Appeal, Fourth Circuit, No. 2001-CA-1497.

May 31, 2002
Denied.

CDK
PFC
BJJ
JPV
CDT
JTK
JLW

Supreme Court of Louisiana
May 31, 2002

/s/ [illegible]
Deputy Clerk of Court
For the Court

Appendix B

DAVID A. MONTS	*	**NO. 2001-CA-1497**
VERSUS	*	**COURT OF APPEAL**
BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE D/B/A UNIVERSITY OF NEW ORLEANS, PATRICK M. GIBBS, FRANK H. SCHAMBACH AND GUSTAVE S. CANTRELL	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 97-12325, DIVISION "D"
Honorable Lloyd J. Medley, Judge
****
Judge David S. Gorbaty
****

(Court composed of Chief Judge William H. Byrnes III, Judge James F. McKay III, Judge David S. Gorbaty)

Jack E. Morris
4051 Veterans Boulevard
Suite 208
Metairie, LA 70002
COUNSEL FOR PLAINTIFF/APPELLANT

Phyllis Guin Cancienne

Alexander M. McIntyre, Jr.
LOCKE LIDDELL & SAPP, LLP
601 Poydras Street
Suite 2400, Pan American Life Center
New Orleans, LA 70130-6036

-and-

Barbara L. Bossetta
Assistant Attorney General
Department of Justice
601 Poydras Street
New Orleans, LA 70130-6036
COUNSEL FOR DEFENDANT/APPELLEE

AFFIRMED

In this appeal, plaintiff contends that the trial court erred in granting defendants' motion for summary judgment, and that the judge abused his discretion in failing to refuse or continue the defendants' motion for summary judgment. For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

David Monts was hired by the University of New Orleans ("UNO") on January 7, 1991 as an electrical engineer. That position is not classified as civil service employment, and no employment contract or other promise of continued employment existed. As a result, Mr. Monts was employed "at-will," meaning that he could be terminated at any time with or without cause. On or about July 15, 1996, Mr. Monts was placed on administrative leave, and informed that he was to be terminated, effective thirty days later, on August 15, 1996. In correspondence dated July 15, 1996, John Michael Parnon, plaintiff's supervisor, explained to Monts that he was being discharged for his continued disruption of departmental

meetings, and his negative attitude to his employment with UNO.

Plaintiff filed suit, claiming that he was terminated for reporting unethical and hazardous practices to his supervisors at UNO and their legal advisors at the Phelps Dunbar law firm. In addition, Monts sued three UNO administrators in their official and individual capacities alleging the following causes of action:

1. Wrongful discharge in violation of a purported "public interest exception to the employment at-will doctrine";
2. Breach of contract;
3. Failure to bargain in good faith;
4. Wrongful discharge in violation of Louisiana's Whistle Blower Statute, La. R.S. 42:1169;
5. Intentional infliction of emotional distress;
6. Conspiracy to retaliate for filing an age discrimination complaint with the EEOC under La. R.S. 51:2256 (Louisiana Human Rights Act);
7. Deprivation of his constitutional free speech rights under color of state law in violation of 42 U.S.C. Section 1983; and
8. Deprivation of constitutionally protected rights under La. Const. Art. I, Section 7.

After extensive discovery, defendants filed a Motion for Summary Judgment on October 29, 1999. Plaintiff filed an opposition to this motion on May 1, 2000. After a hearing on May 5, 2000, the trial court granted defendants' motion, but mistakenly did so "without prejudice." On motion of defendants and after a hearing, the trial court amended its judgment to reflect that it was, in fact, "with prejudice." On appeal to this court, the matter was remanded back to the trial court on the grounds that neither judgment was final. On March 27, 2001, the trial court issued an order re-setting

defendants' motion for hearing on June 15, 2001. However, on April 6, 2001, before the hearing took place, the trial court rendered a judgment again granting the defendants' Motion for Summary Judgment and dismissing plaintiff's suit with prejudice. Plaintiff subsequently filed this appeal.[1]

DISCUSSION

Plaintiffs assert that the trial court erred in granting defendants' motion for summary judgment and dismissing his claims for wrongful discharge in violation of U.S. Const. Amends. I and XIV and 42 U.S.C. Section 1983.

Appellate courts review summary judgments *de novo*, using the same criteria applied by trial courts to determine whether summary judgment is appropriate. *Guy v. McKnight*, 99-2284 (La.App. 4 Cir. 2/16/00), 753 So.2d 955, 957, *writ denied*, 2000-0841 (La.6/16/00), 764 So.2d 963; *Reynolds v. Select Properties, Ltd.*, 93-1480 (La.4/11/94), 634 So.2d 1180, 1182.

Summary judgment is properly granted only if the pleadings and evidence show that there is no genuine issue of material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. Art. 966(C). Article 966 has recently been amended; the burden of proof remains with the mover to show that no genuine issue of material fact exists. Now, however, once the mover has made a prima facie showing that the motion should be granted, the burden shifts to the non-moving party to present evidence demonstrating that material factual issues remain. Once the motion for summary judgment has been properly supported by the moving party, the failure of the non-moving party to present evidence of a material factual dispute mandates the granting of the motion. See *Hayes v. Autin*, 96-287 (La.App. 3 Cir. 12/26/96), 685 So.2d 691. We must review the summary judgment with reference to the

---

[1] This appeal only concerns the plaintiff's First Amendment and Section 1983 claims; all other causes of action previously asserted by plaintiff have been abandoned.

substantive law applicable to the case. To affirm summary judgment, we must find that reasonable minds would inevitably conclude that the mover is entitled to judgment as a matter of the applicable law on the facts before the court. *Washington v. State, Dept. of Transp. & Development*, 95- 14 (La.App. 3 Cir. 7/5/95), 663 So.2d 47.

The U.S. Fifth Circuit has set forth the elements of a First Amendment retaliation claim as follows:

> As a threshold requirement, a public employee claiming violation of freedom of speech must show that his speech is entitled to judicial protection under the First Amendment. It is so entitled only if it addresses a matter of "public concern," which "must be determined by the content, form, and context of a given statement, as revealed by the whole record." This determination is a question of law to be resolved by the court. If the speech does not address a matter of public concern, a court will not scrutinize the reasons motivating a discharge allegedly in retaliation for that speech. If the speech at issue does address a matter of public concern, the court then engages in the so- called "Pickering/ Connick test," balancing "the interests of the [employee], as a citizen, in commenting upon matters of public concern [against] the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." The more central a matter of public concern is to the speech at issue, the stronger the employer's showing of counter-balancing governmental interests must be. Only if the court finds that the employee's First Amendment rights outweigh the government's interest in the effective provision of public services does the fact-finder proceed to consider the separate issue of causation.

> *Mt. Healthy City School Dist. Bd. of Educ. v. Doyle* [429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977)] mandates that the employee must demonstrate that his protected conduct was a substantial motivating factor in his discharge. The employer then has the burden of showing a legitimate reason for which it would have discharged the employee even in the absence of his protected conduct. The employee can refute that showing by evidence that his employer's ostensible explanation for the discharge is merely pretextual.

Coughlin v. Lee, 946 F.2d 1152, 1156-57 (5th Cir.1991) (citations omitted).

Monts argues that his complaints about issues affecting engineering design standards and fire and safety code enforcement on the UNO campus, as well as about other improper acts of defendants, address a matter of public concern. Specifically, Monts alleges that he engaged in protected speech, which defendants characterized as disruptive and indicative of a negative attitude, in at least four contexts. First, he complained at Mr. Parnon's staff meetings about Mr. Schaumbach's and Mr. Cantrell's[2] tendency to overrule or ignore the recommendations of design professionals on issues of architectural and engineering design, and their tendency to implement architectural and engineering design projects without complete review by a design professional. Further, he researched and copied from the public record in the UNO library an excerpt from the "UNO 1995-96 Budget," including salary and merit increase information, and made photocopies of the information for four of his colleagues, including Parnon, at their request.

---

[2] Frank Schambach was the Director of Physical Plant Services. Initially, Gustave Cantrell was the Assistant Director of Engineering and Construction under Schambach, but beginning in October 1991, Schambach unofficially divided responsibility in the Physical Plant between Mr. Cantrell and Mr. Parnon.

Additionally, he reported to Mr. Schaumbach his belief that Mr. Cantrell "has used his position of power to push through projects of special interest to the campus VIPs, especially his boss's boss, Pat Gibbs," and other complaints about Mr. Cantrell's abusive and harassing conduct. Finally, he reported to UNO's attorneys at Phelps Dunbar a host of "problems which needed to be addressed" regarding design standards and code enforcement during two face-to-face meetings with those attorneys.[3]

In the instant case, review of the alleged code violations with which Monts was concerned--if they were code violations at all--cannot be said to be major matters of public safety. Monts complained of wire size, plumbing, and leveling issues and the like. It would not appear that, even if they were present, these seemingly minor deviations from the purest building practices suggest great threat to the public health and safety. The four instances of allegedly "protected speech" that Monts cites signify his dissatisfaction in his workplace, and are not matters sufficiently infused with public interest to support his First Amendment retaliation claim. Additionally, the context and form of Monts' expression militate against the finding that he was addressing matters of public concern as a citizen, rather than as a disgruntled employee. With the exception of the communication with counsel (of which defendants were allegedly unaware), all of Monts' complaints, either verbal or in memoranda, were internal and more specifically, internal within the Physical Plant Services Department. He made no complaints to other UNO officials, nor did he report the purported misconduct to the State Board of Ethics, which, as explained in the Staff Handbook, he had the full right to do. Accordingly, it is apparent that Monts' internal complaints were not primarily matters of public concern, and thus, not protected speech. As such, under

---

[3] Defendants assert that at the time Monts was terminated, they were unaware of his contact with the attorneys.

Coughlin, we need not address any of the other issues presented by plaintiff, since without protected speech, there can be no violation of the First Amendment. This assignment of error lacks merit.

Plaintiff next contends that the trial court abused its discretion in failing to refuse or continue defendants' motion for summary judgment. Plaintiff asked the trial judge to continue defendants' motion both at the original hearing and after remand, seeking additional time to depose Mr. Parnon, who lives out of state. Plaintiff argues that the facts to which Mr. Parnon was expected to testify would further justify and strengthen his opposition to the motion for summary judgment.

There is no absolute right to delay action on a motion for summary judgment pending further discovery. *Simoneaux v. E.I. du Pont de Nemours*, 483 So.2d 908, 912 (La.1986). It is a matter clearly within the trial judge's discretion. *Id.* This case had been pending for almost four years when the motion for summary judgment was first heard, and extensive discovery had been undertaken. Under the circumstances, it was well within the discretion of the trial court to deny a continuance in this situation. This assignment of error lacks merit.

CONCLUSION

Accordingly, for the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED

Appendix C

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 97-12325 **DIVISION "M"**

DAVID A. MONTS

VERSUS

BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE d/b/a UNIVERSITY OF NEW ORLEANS, PATRICK M. GIBBS, FRANK H. SCHAMBACH, AND GUSTAVE S. CANTRELL

FILED:_____ _____
DEPUTY CLERK

JUDGMENT

This Motion for Summary Judgment originally came before the court on May 5, 2000.

Present at the hearing were:

Jack E. Morris #22539 — Attorney for plaintiff, David A. Monts

Alexander M. McIntyre, Jr. #17053
Attorney for defendant, Board of Supervisors of Louisiana State University, et al.

On application of Plaintiff to the Fourth Circuit Court of Appeal, a rehearing was granted with respect to the Fourth Circuit's opinion rendered on October 25, 2000. In that opinion, the Fourth Circuit affirmed this Court's decision to grant defendant's motion to amend a summary judgment to reflect that the dismissal of plaintiff's suit with prejudice. In its rehearing decision of March 14, 2001, the Fourth Circuit set aside this court's May 9, 2000 judgment, the parties were restored to the positions they were in prior to the May 9th judgment, and the Court remanded this matter to the trial court for further proceedings.

After considering the arguments, evidence, all pleadings, discovery and applicable law presented, the Court finds that judgment should be granted in favor of defendants, Board of Supervisors of Louisiana State University, et al, against plaintiff, David A. Monts pursuant to Louisiana Code of Civil Procedure art.(s) 1915 and 1918, thus, designating this judgment as a final judgment.

IT IS ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment filed by defendants should be **GRANTED**. Pursuant to Louisiana Code of Civil Procedure art.(s) 1915 and 1918, this judgment is hereby designated as a final judgment. Any and all of Plaintiff's claim against defendant are hereby **DISMISSED** with prejudice.

JUDGMENT SIGNED, New Orleans, Louisiana, this 6th day of Ap., 2001.

/s/ [illegible]
JUDGE

Appendix D

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 97-12325 **DIVISION "M"**

DAVID A. MONTS

VERSUS

BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND . MECHANICAL COLLEGE, PATRICK M. GIBBS, FRANK H. SCHAMBACH, AND GUSTAVE S. CANTRELL

FILED:_____ **DEPUTY CLERK_____**

REASONS FOR JUDGMENT

This matter came for hearing on defendant's Motion for Summary Judgment on May 5, 2000.

Jack E. Morris 22539 Attorney for David A. Monts

Phyllis Guin Cancienne [illegible]
Alexander M. McIntyre, Jr. #17053
Attorney for Board of Supervisors of Louisiana State University and Agricultural and Mechanical College D/B/A University of New Orleans, Patrick M. Gibbs, Et Al.

The Court, after considering the law, evidence presented, stipulations, and arguments of counsel rules in favor of the defendant's, Board of Supervisors of Louisiana State University and Agricultural and Mechanical College D/B/A University of New Orleans, Patrick M. Gibbs, Et. Al. for the reasons set forth below:

FACTS

This suit arises from plaintiff's claim that he was terminated for reporting unethical and hazardous practices to his supervisors at the University of New Orleans (hereinafter referred to as UNO or University) and their legal advisors. In addition, the plaintiff sued three UNO Administrators in their official and individual capacities alleging the following causes of actions against defendants:

1. wrongful discharge in violation of a purported "public interest exception to the employment-at-will doctrine";
2. breach of contract;
3. failure to bargain in good faith;
4. wrongful discharge in violation of Louisiana's Whistle Blower Statute, LA.R.S. 42:1169;
5. intentional infliction of emotional distress;
6. conspiracy to retaliate for filing an age discrimination complaint with the EEOC under La. R.S. 51:2256 (Louisiana Human Rights Act)
7. deprivation of his constitutional free speech rights under color of state law in violation of 42 U.S.C. § 1983; and
8. deprivation of constitutionally protected rights under La. Const. Art. I, § 7.

Mr. Monts was hired by UNO on January 7, 1991 as an electrical engineer. This position is not classified as civil service employment and no employment contract or other promise of continued employment existed. As a result, Mr.

Monts was employed "at will" meaning he could be terminated at any time with or without cause. On or about July 15, 1996, Mr. Monts was placed on administrative leave and informed that he was to be terminated effective thirty (30) days later on August 15, 1996. In correspondence sent to Mr. Monts dated July 15, 1996 from his supervisor John Michael Parnon, it was explained to him that he was being discharged for his continued disruption of departmental meetings and his negative attitude with regard to his employment with the University. The reasons for the discharge, as long as they are not unlawful, are not relevant in an "at-will" employment state such as Louisiana. *Mix v. University of New Orleans*, 609 So. 2d 958, 964 (La. App. 4th Cir. 1992).

LAW on SUMMARY JUDGMENT

Louisiana Code of Civil Procedure Article 966 provides that:

> Summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, ... the procedure is favored and shall be construed to accomplish these ends. In addition, it provides that the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to material fact, and that the mover is entitled to judgment as a matter of law. Moreover, the mover is not required to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. (Emphasis added)

In the present case, plaintiff failed to provide evidence to support his causes of action against the defendants' therefore summary judgment was appropriate in this case. The Fourth Circuit Court of Appeal has taken notice of the change in the law on summary judgments, stating in *Lozier v. Sec. Transfer & Inv. Corp.*, 96-2690, p.5 (La. App. 4th Cir. 04/30/97); 694 So. 2d 497, that:

> Summary judgments are now "favored" and thus the rule should be liberally applied, which requires courts to change their attitudes when reviewing motions for summary judgment from the attitudes required under the preamendment jurisprudence which proclaimed just the opposite - that summary judgments were not favored and thus should be strictly construed. The language of the amendment tracts the language of Federal Rule of Civil Procedure 56, and is designed to allow courts to decide whether enough evidence exists to go to trial, thus giving judges an opportunity to weed out meritless litigation.

In order to defeat a Motion for Summary Judgment, the opposing party may not rest on the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided by law, must set forth specific facts showing that there is a genuine issue of fact for trial. La. C.C.P. Art. 967; *Stevedoring Services of America v. Kahn*, 98- 0926 (La. App. 4th Cir. 12/09/98); 726 So.2d 53, 55 citing *Townley v. City of Iowa*, 97-493 (La. App. 3rd Cir. 10/29/97); 702 So. 2d 323, 326. If the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact. La. C.C.P. Art. 966 C (2), 726 So.2d at 55. If he cannot, "muster sufficient evidence to make out his claim, a trial would be

useless and defendant's are entitled to summary judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986), citing *Motton v. Lockheed Martin Corp.*, 703 So.2d 202, 205 (La. App. 4th Cir. 1987).

In the present case, plaintiff had the burden of proving that he was terminated for other than the stated reasons: tardiness in performing his work and other disruptive behavior. Plaintiff, however failed to carry this burden of proof and provided insufficient evidence to support his causes of action against the defendant's, thus summary judgment was appropriate.

Employment at Will

Under Louisiana law, a person employed for an indefinite period is an employee at will. An "at-will" employee is free to quit at any time without liability to his or her employer and may be terminated at any time, provided the termination does not violate any statutory or constitutional provision. *Mix v. University of New Orleans*, 609 So.2d 958, 961 (La. App. 4th Cir. 1992). In the instant case, plaintiff was a non-classified employee not protected by the Civil Service and as such was employed at-will and could be terminated at any time with or without cause. Plaintiff presented no evidence that his employment with the University was not at-will nor did he show that he was discharged for any reason other than his failure to timely complete his work assignments and his disruptive behavior within the Physical Plant Department.

No Public Policy Exception to Louisiana's Employment -At-Will Doctrine

Plaintiff alleged that his termination was in violation of the "public policy exception" to the employment-at-will doctrine in Louisiana. However, attempts by other employees to establish such an exception in Louisiana have failed. The Fourth Circuit has held that "broad policy considerations creating exceptions to employment-at-will and affecting relations between employer and employee should not be

considered by this Court." *Gil v. Metal Service Corporation*, 412 So.2d 706, 708 (La. App.4th Cir. 1982).

Defendant's Not liable for Breach of Contract as No Contract Existed

Plaintiff also alleged that defendants were liable for breach of contract however they failed to present any evidence of a written employment contract, nor did they suggest to the Court that an "implied contract" of employment existed. The Fourth Circuit has held that "any ambiguity [with respect to an employment relationship] should be construed in favor of employment-at-will." *Schwartz v. Administrators of the Tulane Educational Fund*, 97-0222 (La. App. 4th Cir. 09/10/97); 699 So.2d 895 quoting *Schalow v. Loyola Univ.*, 94-0797 (La. App. 4th Cir. 11/30/94); 646 So.2d 502. Furthermore, the Court found that any employment handbooks or other expressions of company policy were unilateral in nature and failed to evidence a meeting of the minds between the employer and employee 669 So. 2d at 897. Thus, the Court found in this case that plaintiff had no contract of employment with defendants and as such no contract was breached and plaintiff's claim against defendants for breach of contract was without merit and should have been dismissed.

In addition, plaintiff's claim that the defendant's failed to bargain with him in good faith pursuant to Civil Code Articles 1759 and 1983, which provides that "contracts must be performed in good faith." Since no contract of employment existed, plaintiff's claim for failure to bargain in good faith was also dismissed.

Defendant's Not Liable under the "Louisiana Whistle Blower Statute"

Louisiana's Whistleblower Statute grants a cause of action to a plaintiff who is disciplined for reporting a violation of the law "to his agency head or the board... ." La. R.S. 42:1169. The statute also states that "in the event any public employee is suspended, demoted, or dismissed in violation of this Section as an act of reprisal... such employee shall report

such action to the Board. In this case, plaintiff reported alleged violations of state building and safety codes to UNO's attorney's and not to the Board of Ethics or agency head, as provided in the statute. Moreover, there was no evidence whatsoever that the University attorneys reported Monts' visits to anyone at the University who had authority to hire and fire an employee as provided under the statute. Thus, under the meaning of Louisiana's Whistleblower Statute, plaintiff failed to state a cause of action.

Plaintiff also failed to present any evidence that defendants retaliated against him because of any disclosures made by him to the University attorneys which was also fatal to his claim. Rather, the evidence that was presented showed that plaintiff was dismissed solely due to his poor attitude and his constant disruption of departmental meetings. Since no evidence was produced suggesting anything to the contrary there was no genuine issue of material fact on this issue and summary judgment was appropriate.

Intentional Infliction of Emotional Distress

In order to recover for intentional infliction of emotional distress, a plaintiff must establish (1) that the conduct of the defendant was extreme and outrageous; (2) that the emotional distress suffered by the plaintiff was severe; and (3) that the defendant desired to inflict severe emotional distress or knew that severe emotional distress would be certain or substantially certain to result from this conduct. *White v. Monsanto, Co.* 585 So.2d 1205 (La. 1991). In Monsanto, the Supreme Court held that in order for conduct to be actionable, it must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency" and "be regarded as atrocious and utterly intolerable in a civilized community." 585 So.2d at 1209.

Plaintiff's only evidence of such alleged abuse was a meeting attended by Mr. Monts, Mr. Schambach, Mr. Parnon and Mr. Cantrell. At this meeting Mr. Cantrell raised his voice in speaking with Mr. Monts in expressing his displeasure with

the progress of his work on a particular job. However, not only did Mr. Cantrell not have supervisory authority over Mr. Monts at the time, but nothing in the evidence presented by plaintiff suggest that Mr. Cantrell's tone of voice could have been (1) specifically designed to cause severe mental distress or (2) constitute sufficiently outrageous conduct to be "regarded as atrocious and utterly undesirable in a civilized society." Monsanto, 585 So.2d at 1209.

Furthermore, the Second Circuit has held that an at-will employee cannot bring a claim for intentional infliction of emotional distress due to wrongful termination. *Stevenson v. Lavalco, Inc.*, 28020, (La. App. 2d Cir. 02/28/96); 669 So.2d 608, 611. Specifically, the Court held that, where an employee is employed for an indefinite term, Louisiana law allows the employment relationship to be terminated at the will of either party. *Roberts v. Louisiana Bank & Trust Co.*, 550 So.2d 809 (La. App. 2d Cir. 1989), writ denied, 552 So.2d 398 (La. 1989). Based on the foregoing, the Court found that Mr. Cantrell's outburst did not raise to the level required by Monsanto and thus found no genuine issue of material fact existed as to plaintiff's claim for intentional infliction of emotional distress and summary judgment was appropriate.

Defendant's Not liable under La. R.S. 51:2256 (Louisiana Human Rights Act)

Louisiana's Human Right's Act, La. R.S. 51:2256, makes it unlawful for a person or two or more persons to conspire to retaliate or discriminate against a person who has opposed a practice declared unlawful under Title 51, or because he has "made a charge, filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under this Chapter." La. R.S. 51:2256 (West, 1998).

Plaintiff alleged that the defendants' are liable for conspiracy to retaliate and discriminate against him because he made a charge against them for age discrimination with the Equal Employment Opportunity Commission (EEOC) stemming from his failure to receive a promotion. The Court

found that defendants had no knowledge of his EEOC charge when the decision was made to terminate his employment and thus could not have conspired to retaliate against plaintiff for his EEOC filing. Likewise, the Court found that no causal relationship existed between plaintiff's termination and his filing a claim with the EEOC. Furthermore, the Fifth Circuit held in *Chambliss v. Foote*, 421 F. Supp. 12 (E.D. La. 1976) a similar case on point that a university and its officials constituted a single entity that could not conspire with itself. Id. at 15. Accordingly, for the reasons above the Court found that plaintiff did not have a cause of action under La. R.S. 51:2256 and plaintiff's claim was dismissed.

Constitutional Claims

Plaintiff alleged that he was wrongfully discharged in retaliation for exercise of his First Amendment rights of free speech. To make a claim under the First Amendment, a plaintiff must establish that his speech was "protected", such that it was a matter of public concern warranting First Amendment protection. In addition, the "employee must demonstrate that his protected conduct was a substantial motivating factor in his discharge." *Coughlin v. Lee*, 946 F.2d 1152 (La. App. 5th Cir. 1991). In this case the substantial motivating factor in plaintiff's discharge was his disruptive behavior, negative attitude and divisive actions in disseminating information concerning the salaries of co-employees and his superiors. The Court found that although the First Amendment may have protected plaintiff's speech, his actions clearly justified his termination.

Secondly, plaintiff alleged that his Fourteenth Amendment right of protection from improper deprivation of a property right was violated. However, as previously discussed plaintiff was an at-will employee and as such he was subject to termination upon thirty (30) days notice. Therefore, plaintiff had no vested "property interest" in his job and no Fourteenth Amendment claim.

SIGNED in New Orleans, this 9th day of May, 2001.

/s/ [illegible
JUDGE

Appendix E

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in pertinent part:

> Congress shall make no law . . . abridging the freedom of speech . . . .

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . .

42 U.S.C. § 1983 provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

The Louisiana Building Code for State Owned Buildings Law, La. R.S. 40:1721 *et seq.*, provides in pertinent part:

§ 1721. Declaration of policy

In order to insure the public health and safety and to facilitate the efficient use of state funds in the new construction, alterations, additions for renovations of state buildings, there is hereby created a Louisiana Building Code for State Owned Buildings consisting of the various building codes and standards designated in this Part.

The provisions of this Part should not be construed to supercede any local building codes or standards except as they apply to state owned buildings.

La. R.S. 40:1721.

§ 1722. Louisiana Building Code

. . . .

B. The Louisiana Building Code shall consist of the following designated and described codes and standards:

(1) The Life Safety Code, Standard 101, 1973 Edition as published by the National Fire Protection Association.

(2) Chapter XIV of the State Sanitary Code (Plumbing) as promulgated by the secretary of the Department of Health and Hospitals.

(3) The Standard Building Code--1973 Edition with 1975 Revisions as published by the Southern Building Code Congress.

(4) The Standard Mechanical Code--1971 Edition as published by the Southern Building Code Congress.

(5) The National Electric Code--1975 Edition (NFPA No. 70-1975) as published by the National Fire Protection Association.

C. All of the above designated and described codes and standards shall include all later editions and revisions as now or hereinafter provided.

La. R.S. 40:1722(B) and (C).

The Louisiana Registration Law for Professional Engineers and Land Surveyors, La. R.S. 37:681 *et seq.*, provides in pertinent part:

§ 681. General provisions

In order to safeguard life, health, and property, and to promote the public welfare, any person in either public or private capacity, or foreign or domestic corporation, practicing or offering to practice professional engineering or professional land surveying, shall be required to submit evidence that he is qualified to so practice and shall be licensed as hereinafter provided. It shall be unlawful for any person to practice or to offer to practice in this state engineering or land surveying, as

defined in this Chapter, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer or a professional land surveyor, unless such person has been duly licensed under the provisions of this Chapter.

La. R.S. 37:681.

§ 682. Definitions

The following words and phrases when used in this Chapter shall have the following meaning, unless the context clearly requires otherwise:

. . . .

(4) "Engineer" or "professional engineer" shall mean a person who, by reason of his special knowledge and ability to apply the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design, acquired by an engineering education and engineering experience, is qualified to practice engineering, as evidenced by his licensure as such by the board.

. . . .

(12) "Responsible charge" shall mean the direct control and personal supervision of engineering work or land surveying, as the case may be.

. . . .

(14) "Rules of professional conduct" shall mean those rules promulgated by the board for the protection of the public which establish standards of conduct for professional engineers, professional land surveyors, engineer interns, land surveyor interns, and corporations in keeping with the purposes and intent of this Chapter.

La. R.S. 37:682.

The Rules of the Rules of Professional Conduct for Professional Engineers and Land Surveyors, LAC 46:2101 *et seq.*, provide in pertinent part:

§ 2101. Scope; Knowledge; Definition of "Registrant"

A. In order to safeguard life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity and practice, the following rules of professional conduct shall be binding on every registrant. These rules of professional conduct deal primarily with the relationship between registrants and the public, and should not be construed as a substitute for codes of ethics of the various professional and technical societies.

. . .

LAC 46:2101(A).

§ 2103. Registrants

A. Registrants shall hold paramount the safety, health and welfare of the public in the performance of their professional duties.

B. Registrants shall at all times recognize that their primary obligation is to protect the safety, health, property, and welfare of the public. If their professional judgment is overruled by nontechnical authority, they will clearly point out the consequences, notifying the proper authority of any observed conditions which endanger public safety and health.

C. . . .

3. Registrants may not accept the responsibility for, nor review, revise, sign, or seal drawings when such plans are begun by persons not properly registered and qualified; or do any other act to enable either such registrants or the project owners, directly or indirectly, to evade the requirements of R.S. 37:681 through 37:703 [*Louisiana Registration Law for Professional Engineers and Land Surveyors*].

LAC 46:2103(A)-(C)(3).

Appendix F

STATE OF LOUISIANA
PARISH OF JEFFERSON

AFFIDAVIT OF DAVID A. MONTS, P.E.

BEFORE ME, the undersigned Notary Public, personally came and appeared:

DAVID A. MONTS, P.E.

who, after first being duly sworn by me, Notary Public, did depose and say:

1. I am domiciled in the Parish of Jefferson, State of Louisiana, and my residence address is 117 Layburn Court, Terrytown, Louisiana 70056.

2. I am of sound mind and body and am competent to testify as to the matters stated herein.

3. My qualifications include a Bachelor of Science degree in Physics and Chemistry from Eastern Illinois University in 1969; a Master of Science degree in Nuclear Engineering from the University of Illinois in 1971; completed course work for a Ph.D. degree in Nuclear Engineering at the University of Illinois in 1972-73; course work in electrical technology at Central Virginia Community College in 1975-77; completed power course work in electrical engineering at the University of Virginia in 1978-80; registration in Virginia as a Professional Engineer in Nuclear Engineering in 1975; registration in Louisiana as a Professional Engineer in Electrical Engineering in 1983; and approximately twenty-one years of work experience in nuclear and electrical engineering.

4. From January 7, 1991 until July 15, 1996, I was employed by the University of New Orleans ("UNO"), a public university governed by the Board of Supervisors of the Louisiana State University and Agricultural and Mechanical

College, as an Electrical Engineer in the Department of Physical Plant Services ("PPS").

5. My duties as an Electrical Engineer at UNO included creating electrical plans and specifications for UNO building renovations and acting as electrical project manager during the design and construction phase.

6. As an Electrical Engineer employed by UNO, I understood it to be my professional ethical, and legal duty to protect the health, safety and welfare of the public by overseeing the electrical design of projects on campus to ensure safe, proper and economical design, and to report and correct any situation which may endanger the health, safety, and welfare of the public, all pursuant to the provisions of the Louisiana Registration Law for Professional Engineers and Land Surveyors, Louisiana Revised Statutes 37:682 *et seq.*; the Louisiana Building Code for State Owned Buildings ("Code"), Louisiana Revised Statutes 40:1721 *et seq.* (incorporating by reference the National Fire Protection Association Life Safety Code and National Electric Code, and the Southern Building Code Congress Standard Building Code and Standard Mechanical Code); the National Society of Professional Engineers Code of Ethics for Engineers; and the Institute of Electrical and Electronics Engineers, Inc. Code of Ethics.

7. At the time I began working at UNO in January 1991, the Director of PPS was Frank H. Schambach ("Mr. Schambach"), who reported to the Vice Chancellor for Business Affairs, Patrick M. Gibbs ("Mr. Gibbs"). Initially, Gustave S. Cantrell ("Mr. Cantrell") was the Assistant Director of Engineering and Construction under Mr. Schambach, but beginning in about October 1991, Mr. Schambach unofficially divided responsibility in Physical Plant between Mr. Cantrell, a civil engineer whom Mr. Schambach placed in charge of "Capital Outlay Projects," and John Michael Parnon ("Mr. Parnon"), an architect whom Mr. Schambach placed in charge of "Special Projects" and who, in September 1995, acquired the official title of Manager of Facility Renovations and Design.

During most of the period of my employment, I reported to Mr. Parnon, who in turn reported to Mr. Schambach, who in turn reported to Mr. Gibbs.

8. On August 16, 1994, two design professionals in PPS, Mr. Alan Anderson (Electrical Engineer) and Mr. George Belteau (Mechanical Engineer) resigned because of their low salaries (Ex. 4.01, 4.02, 4.03). Thereafter, Mr. Parnon placed me in charge of interviewing applicants for the Electrical Engineering position vacated by Mr. Anderson. However, because of the low salary being offered for the engineering positions, PPS was unable to hire replacements for either Mr. Anderson or Mr. Belteau (Ex. 4.08, 4.09). Mr. Parnon and I then both lobbied Mr. Schambach and Mr. Gibbs to increase all of the design professionals' salaries in order to be able to attract qualified applicants, to which Mr. Schambach and Mr. Gibbs routinely responded that the budget would not permit any such salary increases. In about December 1995, I researched and copied by hand the "UNO 1995-96 Budget," including employee salary and merit increase information, at the UNO library after working hours (Ex. 4.12). Shortly thereafter at a weekly staff meeting at which design team staffing for the coming year was discussed, I mentioned that I had researched the UNO and PPS budget and salary information in the UNO library and advised my co-workers that I would provide a copy of the budget and salary information to anyone who was interested. Mr. Parnon, Mr. Ehlers, Mr. Dan Falcone, and Mr. Alex Diemont requested the information and I provided it. My motive in doing so was not to protest my own salary, but rather to provide information with which my co-workers could evaluate the staffing and salary situation for themselves rather than relying solely on Mr. Schambach's and Mr. Gibbs' claims that the budget would not permit salary increases.

9. During the course of my work at UNO, various Code violations came to my attention. At such times, I would report the violations to Mr. Schambach either directly or

through Mr. Parnon and request permission and funding to correct the violations. On many occasions, however, Mr. Schambach (who is neither an engineer nor an architect) refused to permit or fund the corrections, resulting in continuing hazards to the health, safety and welfare of the public.

10. Specific code violations I witnessed and reported but which nevertheless were not corrected include but are not limited to the following:

- Project: Building 16 Physical Plant Services Renovation
  Scope: Warehouse space converted to office space.
  Violation: No fire alarm system facilities provided as required by Code.

- Project: Fine Arts Mixing Building Addition.
  Scope: Add space to existing building to house art supplies and mixing equipment.
  Violation: No lighted exit signs provided as required by Code.

- Project: Engineering Building, Sixth Floor
  Scope: Electrical.
  Violation: 4' X 4' cover is off a section of the power distribution center exposing "live" electrical parts in violation of Code.

- Project: Business Administration Building, BA 165 Auditorium Renovation
  Scope: Renovate existing auditorium.
  Violation: No overcurrent protection for secondary side of transformer provided as required by Code.

- Project: Liberal Arts Building, LA 234 Compressed Video Classroom Renovation
  Scope: Renovate existing classroom space to meet the requirements of a remote video/audio classroom.
  Violation: Additional supports for cable tray needed, a level continuous tray system needed, and unevenness and diagonal need to be avoided, all as required by Code.

- Project: UNO Arena and Baseball Field, Baseball Field Outdoor Scoreboard Installation
  Scope: Provide electrical power for scoreboard.
  Violation: Improper (smaller) wire size used in violation of Code and possibly other Code violations such as improper grounding.

- Project: Engineering Building, Fifth Floor
  Scope: Electrical.
  Violation: Disconnect not labeled in violation of Code.

- Project: Business Administration Building, BA Computer Laboratory Renovation
  Scope: Convert classrooms space into a computer laboratory.
  Violation: Ground wire not in conduit with the A/C conductors in violation of Code.

11. Additionally, in February 1995, Mr. Cantrell "fired" me from the Building 16 Warehouse Renovation project when I complained that he had improperly changed the electrical design I had prepared for the project without consulting me.

12. Thereafter, in June 1995, I sought the advice of Ms. Nan Alessandra ("Ms. Alessandra") of the law firm of Phelps Dunbar, L.L.P., UNO's attorneys, regarding questions of Code enforcement and other issues relating to Mr. Schambach's and Mr. Cantrell's frequent decisions to overrule the directives of myself and other PPS design professionals relating to health and safety issues in the design of campus projects. With Mr. Parnon's (my immediate supervisor's) knowledge and consent, I met with Ms. Alessandra and her associate David Korn ("Mr. Korn") on September 13, 1995 and again on December 6, 1995. At the September 13, 1995 meeting, I stressed the need for confidentiality because I feared reprisals from PPS management, and at both the September 13, 1995 meeting and the December 6, 1995 meeting I reported my concerns in detail and requested a complete independent

investigation of those concerns. At no time did Ms. Alessandra or Mr. Korn advise me to file a complaint with the Louisiana Board of Ethics or Louisiana Ethics Administration Program or inform me that I could do so.

13. In June 1996, I scheduled a third meeting with Ms. Alessandra and Mr. Korn for July 19, 1996. However, on July 15, 1996, four days before the scheduled meeting, Mr. Parnon called me into Mr. Schambach's office where, without any prior warning whatsoever, Mr. Schambach and Mr. Parnon informed me they were terminating my employment. Later that day, I received a letter (a true and correct copy of which is attached hereto) from Mr. Parnon and Mr. Schambach citing alleged "continued disruptions of departmental meetings . . . by complaining and arguing about non-project related matters" and alleged "negative attitude with regards to your employment with the University" as the reasons for my termination. Mr. Parnon has since confessed to me that, according to Mr. Schambach, Mr. Gibbs ordered my termination, and that he (Mr. Parnon) does not know the real reason I was terminated.

14. Prior to my termination, I was never reprimanded or counseled for any reason, and my UNO Conduct History Record lists only commendations for work well done.

15. I know Mr. Schambach was aware of my meetings with UNO's attorneys because John Ehlers, a PPS Mechanical Engineer at the time, later told me he overheard Mr. Schambach angrily telling someone on the telephone, "Dave went to go see an attorney!" Also, on July 17, 1996, two days after my termination on July 15, 1996 and two days before my next scheduled meeting with Ms. Alessandra and Mr. Korn on July 19, 1996, Mr. Korn telephoned me at my home and stated that because I was now on "administrative leave," there was the possibility of Phelps Dunbar having to represent UNO in this matter and that therefore Phelps Dunbar believed it best to cancel the July 19, 1996 meeting. I asked Mr. Korn if Ms.

Alessandra was aware of the decision to cancel the meeting, and Mr. Korn said that she was.

16. I believe Mr. Gibbs and Mr. Schambach terminated me in retaliation for complaining about Code violations at UNO and other improper acts by PPS management, for reporting such violations and improper acts to UNO's attorneys, and for requesting an independent investigation of such Code violations and improper acts, and also to prevent me from attending the scheduled meeting with UNO's attorneys on July ~~19, 1996~~. I further believe Mr. Cantrell may have conspired with Mr. Gibbs and Mr. Schambach in making their decision to terminate me for these reasons. Accordingly, I believe Mr. Gibbs, Mr. Schambach, and Mr. Cantrell violated the Louisiana Whistleblower Statute, Louisiana Revised Statutes 42:1169, by discharging and retaliating against me for reporting to my supervisors and to UNO's attorneys what I reasonably believed to be violations of law and acts of impropriety related to the scope and duties of public employment.

17. On or about December 6, 1999, I filed a complaint of ethics violations with the Louisiana Board of Ethics against Mr. Schambach, Mr. Cantrell, and Mr. Gibbs as a result of their actions in discharging and retaliating against me for reporting to my supervisors and to UNO's attorneys what I reasonably believed to be violations of law and acts of impropriety related to the scope and duties of public employment.

18. Since my termination, I have been unable to find full-time employment as an Electrical Engineer despite my diligent efforts to do so.

19. The document attached hereto as "Exhibit Monts A" is a true and correct copy of my "Notes to File" dated February 13, 1996 regarding a verbal message I delivered to Frank Schambach on February 13, 1996, and is a true and accurate account of events which occurred on February 13, 1996.

20. The document attached hereto as "Exhibit Monts B" is a true and correct copy of my "Account of Pretermination Hearing Concerning David A. Monts Occurring on Monday, July 15, 1996" dated July 17, 1996, and is a true and accurate account of events which occurred on July 15, 1996.

21. The document attached hereto as "Exhibit Monts C" is a true and correct copy of my "Account of Meetings/Conversations with University of New Orleans Attorneys" dated August 21, 1996, and is a true and accurate account of events which occurred between about June 1995 and July 17, 1996.

22. All of the above and foregoing statements are true and correct and are made on my own personal knowledge.

/s/David A. Monts
DAVID A. MONTS, P.E.

SWORN TO AND SUBSCRIBED
BEFORE ME, NOTARY PUBLIC, THIS
28th DAY OF April, 2000.

/s/Jack E. Morris
NOTARY PUBLIC

"Exhibit Monts A"

February 13, 1996 - Notes To File

Verbal message delivered to Frank Schambach (FHS) on February 13, 1996 by David Monts

As you (FHS) may know, approximately 10AM Monday, February 12, 1996 Gus Cantrell (GSC) verbally abused Ricardo Contreras witnessed by Don Seals and others concerning the placing of new software on "GSC's computer" (actually UNO's computer used by GSC).

Another recent incident in December 1995 was the false accusations made by GSC against Kevin Hinks in front of other UNO employees including UNO consultants. Gus blamed Mr. Hinks for not doing work that he had done on the Chemical Sciences Annex Capital Outlay Project. Later, when Mr. Hinks confronted Gus about this matter, Gus first stated that he "didn't have time" to discuss the situation. Mr. Hinks retorted that Gus "must make time" for this important matter of these attacks on my (Mr. Hinks) work performance. When Mr. Hinks insisted on talking, Gus relented, and finally admitted he was wrong about the fact of the accusation and wrong about having an audience of outside people when discussing performance matters. Unfortunately, only GSC and Mr. Hinks heard the final outcome of this matter. Gus did not offer or give a public apology.

A third recent incident which you (FHS) are aware, occurred on January 29, 1996 between Gus (GSC) and Amy Carbonette (ALC). GSC was yelling at the top of his lungs, for all to hear, during peak office hours in the heart of the public area of the office (hallway). GSC told ALC at one point "You (ALC) behave like a four year old child". All of this verbal abuse and harassment was over a work order that GSC wanted done.

These recent incidents on top of the many other incidents we (FHS and DAM) are aware of forces me to again voice my concern that apparently no action is forthcoming. I (DAM) have been told by you (FHS) that Gus (GSC) does a "lot" for the University (UNO), and thus, I and others should ignore his abnormal behavior towards his fellow co-workers (humans). I believe the above statement is false.

First, I believe Gus has used his position of power to push through projects of special interest to the campus VIP's especially his boss's boss, Pat Gibbs (PMG), all to the detriment to other projects which have a higher impact on the University's performance. In other words, Gus did not have the "best interest of the University" in mind, but catered to perceived emergencies (the special interests) of the University's VIP's. This changing of priorities allowed Gus to "get things done" for a few University VIP's, however, the vast majority of University clients had to wait even longer (years in many cases) for their projects, because of the inefficiency of the stop and drop everything to work on the VIP's project.

Second, Gus's position of power, allowed him to command all the forces of PPS (Physical Plant Services) to get what he wanted done. It is and was not Gus's own work that "got things done", but the combined work of many individuals, Gus does not work any harder or smarter than many other dedicated PPS employees. Gus tries and often succeeds to project the image that he (GSC) is the hardworking driver of PPS, and that, without Gus nothing would be accomplished at PPS. Of course, just on face value alone the last part of the above statement is absurd.

In summary, there is no defense for Gus's (GSC's) behavior. Gus has been counseled several times about his behavior. Obviously, counseling doesn't work in his case. How much longer must innocent people be subjected to Gus's abuse? PPS

personnel have been terminated for lessor offenses, however, Gus continues his harassment and abuse. Is there a double standard - one standard of conduct for persons in positions of power (administrative positions) such as Gus and a second higher standard on conduct expected of non-administrative positions? Frank (FHS) it is your responsibility as Director of PPS to do something besides just talk to (counsel) Gus. There are many UNO administrators and managers and indeed most if not all PPS administrators, who do a "lot" for the University - and those administrators except for GSC, as far as I know, are not abusing their employees. Frank's (FHS) response was to support Gus, however, he (FHS) did say that he would "think over" the points that I made. FHS did <u>not</u> take any notes.

"Exhibit Monts B"

July 17, 1996

RE: ACCOUNT OF PRETERMINATION HEARING CONCERNING DAVID A. MONTS OCCURRING ON MONDAY, JULY 15, 1996

Approximately 9:45 AM on Monday, July 15, 1996 I was called in to the Director's office (Frank Schambach, Director, Physical Plant Services) by Mike Parnon (Manager, Facility Renovation and Design), my immediate supervisor, unaware of what was to transpire. Sitting on my right was Alan Heintzen (Manager, Administration and Training). I was asked to sit down and the office door was closed.

Frank started the meeting by stating that the University was not satisfied with my work, especially the quantity of work. Mike interrupted by stating that no one questions the quality of my work. Frank continued stating he did not like having to use a consultant for the fiber optics rewiring of the Engineering Building (a nine story building). Also, my negative attitude and disrupting of weekly staff meetings were a problem. My comments after getting over the initial shock of the situation was to state that I am always working over forty hours per week and that the University has recognized my good performance. Frank interjected that we all have too much work to do. I mentioned that the management should talk to Mr. Allan Anderson about my work performance. Frank stated, "What does Allan Anderson have to do with this?"

NOTE: Allan Anderson is a veteran Electrical Engineer and a University of New Orleans full-time, then part-time employee during my tenure.

I stated that Allan Anderson had many years of experience as an electrical engineer and as a manager and since we were co-workers he could judge my work. Mike stated that he thought I was not happy with my present situation. I agreed that I was not happy with the present situation and I was looking for other job opportunities including other Louisiana state jobs as well as other jobs at the University of New Orleans.

NOTE: No inquiry was made as to why I was unhappy. I have stated in the past many times to Mike my unhappiness with management for the following reasons:

1. Upper management (Frank and above) by their actions suggest they do not have an understanding of the design process. In particular, for example, management's disregard or countermanding the decisions of the design professionals with the weak argument that "we do not have the budget for this 'extra'" or "we do not need this" item although the design professional in his/her opinion believes/knows that it is in the best interest of the University to include the item. For example:
   (1) the item is a safety issue in order to meet code,
   (2) the item is a safety issue that the code does not address, however, it should be a part of the design,
   (3) the item is recognized by the industry as a good practice, or
   (4) the item will reduce maintenance expenditures and thus the long term gain outweighs the initial expense.

Upper management allows design work to be done by non-professionals creating a liability for the University. Upper management allows one design professional to do the work of other design professional disciplines. Upper management administers/directs the work of outside professional consultants and the subsequent contractors without the benefit of the advice of the University of New Orleans professional staff. Not only are these practices bad management; but, also, against University of New Orleans' written policy and job descriptions; and may even be illegal.

2. Often upper management allocates the total project budget without consulting with all the design professionals and sometimes without consulting with any design professional. Then upper management expects the design professionals to somehow work within the often unrealistic budget.

3. Upper management often sets unrealistic deadlines to properly complete the task without first consulting with the design professional to determine what the scope of work is and an estimate of the time it would take to complete that scope of work.

4. Upper management gives the design staff insufficient support personnel to complete design tasks efficiently. The design staff has clerical, purchasing agent, inspection, code enforcement, and contract administrative duties which severely limits the time available to do a design. Also, on several occasions the design staff is requested to support maintenance, which again, takes time away from the primary job duties. In addition, the professional design staff is

itself inadequate to perform the volume of work desired even if measures were instituted to enhance efficiency. Currently, the University of New Orleans has over 150 funded projects awaiting design with three design professionals to do the design work; one of those professional designers has management duties.

5. Upper management continues to support the abusive behavior of the Assistant Director of Physical Plant Services who creates a harassing and intimidating environment for the workforce when that particular individual is present. Physical Plant Services staff has identified this problem many times to the proper University of New Orleans authorities and yet the abuse continues.

6. Often upper management changes its mind on which design projects are to receive top priority. A design will be started with instructions to give it highest priority. Then only a few days later upper management will cancel further design work. Sometimes the "rush" project has the design completed then construction doesn't start until weeks or months later or the project is never constructed. The continuous changing of project priorities is inefficient. It is hard to hit a moving target.

7. The professional salaries are low as compared to other state Universities and private industry. Upper management is supportive of this issue, but as yet has not taken any action to increase salaries except to state "get an offer of employment elsewhere and possibly the University of New Orleans can/will take action".

In addition to my immediate supervisor, Mike Parnon, I have expressed the above concerns/issues to Frank on a few occasions. Other design professionals have approached Frank with the same concerns/issues.

I mentioned I did not realize the seriousness of any of the few discussions with Mike about my attitude or deportment and that there was no written record of any discussion.

NOTE: In the past any discipline for non-classified personnel was carried out in a formal meeting in the Physical Plant Services Conference Room with at least three persons present. Those three persons were the disciplined employee, the disciplined employee's immediate supervisor, and the disciplined employee's immediate supervisor's boss. This scenario did not occur with me.

Frank stated that we were professional people and if I wished to be treated as a civil service employee he could create a civil service electrical engineering position which would be at a much lower salary. Then I would have formal counciling sessions and go through reprimands, suspensions, and termination. I should have requested a civil service appointment. Alan Heintzen asked about why I gave members of the University of New Orleans staff copies of the annual salary of various University of New Orleans employees. I stated I didn't see what bearing this question had on the now evident termination proceedings. I stated I made a handwritten copy of a portion of the public record located in the University of New Orleans library, and then made photocopies of that handwritten copy. I asked a few staff members/friends if they wanted a copy. If the staff member/friend wanted a copy I gave him/her a copy. I stated this act is the American way. (Public access and knowledge of public records is in the best interest of democracy.) Frank

stated I could resign or be terminated. Frank stated the resignation could be effective for July 31, 1996 and that I would then receive any (accumulated annual) leave amount. A general discussion ensued which determined I have about 80 hours of annual leave. Frank mentioned the negative stigma that a termination makes versus a resignation. I stated I would need some time to think the matter over. Frank stated, "Do not take too long to think this (matter) over." I countered that I might resign with an effective date of December 31, 1996 in order to give me time to find other employment. I mentioned I thought engineering employment in the New Orleans area was opening up, however, many engineering jobs require either oil/gas experience or chemical plant experience (experience that I do not have). Frank stated that I had until 2:00 PM today, July 15, 1996, to decide if I wished to resign. Mike stated that leaving the University of New Orleans might in the long run be in my best interest. After a pause, and there being no further comments I stood up to leave. Frank asked me to shut his office door when leaving his office. I left Frank's office and shut the office door behind me.

NOTE 1: The meeting ended about 10:05 AM, July 15, 1996.

NOTE 2: About 10:20 AM, July 15, 1996, I was told by Mike Parnon to start packing and be prepared to permanently leave the office by 4:30 PM, July 15, 1996.

NOTE 3: Approximately 11:30 AM, July 15, 1996, I told Mike Parnon that I would not resign.

NOTE 4: I received from Mike Parnon my termination letter at approximately 4:10 PM, July 15, 1996.

This account is authored by myself, David A. Monts, and to the best of my knowledge is a true and accurate record of the subject proceedings.

SIGNATURE: /s/David A. Monts
DAVID A. MONTS

DATE: July 17, 1996

WITNESS OF SIGNATURE: /s/Ben Capella
BEN CAPELLA

DATE: July 17, 1996

WITNESS OF SIGNATURE: /s/Gloria Capella

DATE: July 17, 1996

"Exhibit Monts C"

August 21, 1996

ACCOUNT OF MEETINGS/CONVERSATIONS WITH UNIVERSITY OF NEW ORLEANS ATTORNEYS NAN ALESSANDRA AND DAVID KORN, BOTH WITH THE LAW FIRM OF PHELPS DUNBAR, AND DAVID A. MONTS, P. E., ELECTRICAL ENGINEER OF UNIVERSITY OF NEW ORLEANS PHYSICAL PLANT SERVICES DEPARTMENT

The Sections of This Account Are As Follows:

Section A - OVERVIEW (pages 2-3)

Section B - USEFUL INFORMATION IN UNDERSTANDING THIS ACCOUNT (pages 4-7)

I. Frequent Abbreviations Used In This Account

II. Chain of Command at the University of New Orleans (UNO) Since David A. Monts Started Employment at UNO on January 7, 1991

III. List of Attachments

Section C - SUMMARY (pages 8-10)

First, the SUMMARY describes my concerns of the UNO management overruling the decisions of the professional designers. I requested and obtained answers from the UNO attorney, Ms. Alessandra, on the designers' responsibilities as it relates to code enforcement and other construction related issues.

Second, the SUMMARY briefly describes what occurred at the first face-to-face meeting with UNO attorneys, Ms. Alessandra and Mr. Korn, on September 13, 1995. The detailed description of this meeting is in Section D of this account.

Third, the SUMMARY describes what occurred at the second face-to-face meeting with UNO attorney, Mr. Korn, on December 6, 1995.

Fourth, and lastly, the SUMMARY describes the cancellation of the third face-to-face meeting with UNO attorney(s) which was to occur on July 19, 1996.

Section D - DETAILED ACCOUNT OF SEPTEMBER 13, 1995 MEETING (pages 11-21)

August 21, 1996

ACCOUNT OF MEETINGS/CONVERSATIONS WITH UNIVERSITY OF NEW ORLEANS ATTORNEYS NAN ALESSANDRA AND DAVID KORN, BOTH WITH THE LAW FIRM OF PHELPS DUNBAR, AND DAVID A. MONTS, P. E., ELECTRICAL ENGINEER OF UNIVERSITY OF NEW ORLEANS PHYSICAL PLANT SERVICES DEPARTMENT

OVERVIEW

My concerns about the University of New Orleans-Physical Plant Services (UNO-PPS) management overruling the advice of the UNO professional designers (i.e., the civil engineer, the electrical engineer, the mechanical engineer, and the architect) did not make sense. I was repeatedly being told by UNO management to do what is "best for the University" - then why would a supervisor, untrained in the particular discipline, overrule the decisions of the trained professional? This overruling of the professional designer was even more unbelievable when it was done on health and safety issues (life safety issues or code issues). I and the professional designers who shared my concerns discussed this matter with management on numerous occasions without obtaining any measurable success.

When I met Ms. Nan Alessandra, a partner of Phelps Dunbar (PD) and the UNO attorney, during an Americans with Disabilities Act (ADA) meeting she was conducting at UNO, I asked her for help in clarifying the issues of code enforcement and the designers' responsibilities as it relates to code enforcement and other construction issues which occur in the University setting. These telephone conversations and letter transmittals occurred between June - August 1995.

As our relationship matured, I opened my heart and soul up to the PD attorneys about what I perceived as problems which needed to be addressed. I stressed the need for confidentiality and was assured by PD of confidentiality.

The first face-to-face meeting with the UNO attorneys, Ms. Alessandra and Mr. Korn (works for Ms. Alessandra), and myself occurred on September 13, 1995 in the offices of PD, located in the Texaco building in downtown New Orleans. At that meeting I made the following charges/issues/concerns/assertions in the order of my presentation to the PD attorneys - not in order of importance:

I. Frank H. Schambach (FHS), Director of Physical Plant Services, is not qualified by training or experience to be "Director" or "Facilities Manager".

II. FHS permits harassment and intimidation which are not allowed under UNO policies.

III. FHS and his boss Patrick M. Gibbs (PMG), Vice-Chancellor, Business Affairs Administration, do not comply with State bid law.

IV. FHS and PMG do not comply with State laws in hiring.

V. **FHS practices architecture/engineering without a license, FHS allows other unlicensed persons to practice architecture/engineering, and this practice jeopardizes the health and safety of the public.**

VI. FHS practices bad management.

At the end of our first meeting, I requested a complete independent investigation of the above matters, and, of course, any other matters the investigative team may uncover.

A second face-to-face meeting occurred on December 6, 1995, again at the Texaco building in downtown New Orleans. The UNO attorney, Mr. David Korn, and myself reviewed the issues discussed at the first meeting and then listened to a seventy-five (75) minute recording of a meeting between FHS, the Director of PPS, Gustave S. Cantrell (GSC), the Assistant Director of PPS, John Michael Parnon (JMP), PPS - Manager of Facility Renovations and Design, and myself, David A. Monts, PPS - Electrical Engineer. This recording illuminated and brought to life many of the points of the first meeting. **At the end of our second meeting, I requested a complete independent investigation of the above matters, and, of course, any other matters the investigative team may uncover.**

A third meeting was scheduled for July 19, 1996. I was to present additional documents supporting my claims from the previous meetings. This meeting was cancelled on July 17, 1996, by Mr. Korn, a PD/UNO attorney, who stated that since I was on administrative leave (no mention of my pending termination) that there was the possibility of the UNO attorneys having to represent UNO in this matter. Thus, the UNO attorneys believed it best to cancel the July 19, 1996 meeting.

END OF OVERVIEW

ACCOUNT OF MEETINGS/CONVERSATIONS WITH UNIVERSITY OF NEW ORLEANS ATTORNEYS NAN ALESSANDRA AND DAVID KORN, BOTH WITH THE LAW FIRM OF PHELPS DUNBAR, AND DAVID A. MONTS, P. E., ELECTRICAL ENGINEER OF UNIVERSITY OF NEW ORLEANS PHYSICAL PLANT SERVICES DEPARTMENT

USEFUL INFORMATION IN UNDERSTANDING THIS ACCOUNT

GENERAL NOTE: This account written by David A. Monts is what transpired between myself (David A. Monts) and UNO attorneys. I have additional information about the charges/issues/concerns/assertions concerning the operations of UNO not included in this account.

I. FREQUENT ABBREVIATIONS USED IN THIS ACCOUNT

UNO	-	University of New Orleans
ADA	-	Americans with Disabilities Act
PPS	-	Physical Plant Services - one of the departments at UNO
PD	-	Phelps Dunbar - law firm representing UNO
CUP	-	Central Utilities Plant - one of the divisions of PPS
PMG	-	Patrick M. Gibbs, UNO Vice Chancellor, Business Affairs Administration - responsibility includes PPS, Keifer Lakefront Arena, and other UNO departments
FHS	-	Frank H. Schambach, Director of PPS

GSC - Gustave S. Cantrell, Assistant Director of PPS

JMP - John Michael Parnon, Manager of Facility Renovations and Design

II. CHAIN OF COMMAND AT UNO SINCE DAVID A. MONTS STARTED EMPLOYMENT AT UNO ON JANUARY 7, 1991

A. Chancellor, Gregory M. St. L. O'Brien

B. Vice Chancellor For Business Affairs, Patrick M. Gibbs (PMG)

C. Assistant Vice Chancellor For Business Affairs,

G. Lane Patton until June 30, 1993 when this position was vacated and has yet to be filled

D. Acting Director, then Director of PPS, Frank H. Schambach (FHS)

*E. Assistant Director of PPS, Gustave S. Cantrell, P.E. (GSC)

*F. Manager of Facility Renovations and Design, PPS, John Michael Parnon, AIA Architect, (Mike Parnon, JMP), prior to this appointment JMP was a PPS Project Coordinator.

G. Electrical Engineer, PPS, David A. Monts, P.E.

*The Manager of Facility Renovations and Design was a new position and was officially filled on June 15, 1995. At the beginning of my employment I worked for GSC who was called the Assistant Director - Engineering and Construction, then verbally the PPS Engineering group was told that due to heavy capital outlay workload, GSC would concentrate on capital outlay projects exclusively, and thus, GSC would no longer be head of the Engineering and Construction

group. Mike Parnon would be in charge and become supervisor of the Engineering and Construction group. This action occurred about January 1994. However, I am unaware of any official changes in writing or official updates to my original job description which states that the Assistant Director - Engineering and Construction is my supervisor (Attachment J). Also, no formal announcement was made of the title change or position change of Assistant Director - Engineering and Construction to Assistant Director of PPS.

III. LIST OF ATTACHMENTS

Attachment A - *** — June 7, 1995 - Letter sent by fax to David Monts from Nan Alessandra - Re: Louisiana Revised Statute 40:1724, Building Permits and Occupancy Permits - Four pages.

Attachment B - **** — June 7, 1995 - Letter sent by fax to Nan Alessandra from David Monts -Re: Questions Concerning "Small" Project Construction at UNO - Eight pages.

Attachment C - **** — June 7, 1995 - Letter sent by fax to Nan Alessandra from David Monts -Re: Additional Question Concerning "Small" Project Construction at UNO and an Order Form to Order the Code of Ethics For Engineers from the National Society of Professional Engineers (NSPE) - Two pages.

Attachment D - ***	August 10, 1995 - Letter sent by U.S. Mail to David Monts from Nan Alessandra -Re: Engineering Issues at Physical Plant - Three pages.
Attachment E - *****	August 1995 - Notations by David Monts before, during, and after a telephone conversation with Nan Alessandra on a copy of Attachment D -Re: Engineering Issues at Physical Plant - Three pages.
Attachment F - ***	August 28, 1995 - Letter sent by U.S. Mail to David Monts from Nan Alessandra -Re: Engineering Issues at Physical Plant (Supplement) - Five pages.
Attachment G - **	1995 - Resume of David A. Monts (1995 Version) - Four pages.
Attachment H - **	1991 through 1995 - Letters of praise of David Monts' work at UNO - Twenty-one pages.
Attachment I - *	March 29, 1995 - Page 14 entitled "Physical Plant Services Proposed Organizational Structure" from UNO Facility Renovation Process Team - Report and Recommendations - One page.
Attachment J - *****	January 7, 1991 - Personnel Action Form - UNO and LSU System Position Description Form for David Monts, PPS Electrical Engineer - Four pages.

Attachment K - * July 15 through November 1, 1995 - "Job Express" a publication of APPA (Association of Physical Plant Administrators) - Fifteen pages.

Attachment L - * September 7, 1995 - Letter to The UNO Community from Chancellor O'Brien - Re: Not Given (Campus Safety) - One page.

Attachment M - * October 27, 1994 - Letter to University Community from Chancellor* O'Brien Re: Harassment on Campus - One page.

Attachment N - * July 20, 1995 - Letter to Henry Dillon, UNO/Human Resource Management from Mike Cole, PPS Operating Engineer Superintendent - Re: Not given (GSC's abusive conduct) - One page.

Attachment O - * January 28, 1994 - Letter to Frank Schambach (FHS) from Mike Parnon (JMP) - Re: Allocation of Drafting Personnel - One page.

Attachment P - * December 10, 1993 - Letter hand delivered to Henry Dillon and Myron Angel of UNO/Human Resource Management by Messrs. Dan Falcone, Allan Anderson, Mike Parnon and David Monts, all of PPS - Re: GSC Outbursts on December 10, 1993 - Two pages.

Attachment Q - * May 11, 1992 - Letter to Stewart Higgins, PPS Draftsperson from Gus Cantrell (GSC) - Re: Telephone - One page.

Attachment R - * January 9, 1992 - Letter to Mike Parnon (JMP) from Gus Cantrell (GSC) - Re: Not given (Project questions) - One page.

Attachment S - * December 8, 1994 - Letter to the Editor in "Driftwood", the UNO campus newspaper, written by Van Franklin, President, P&T Pest Control, Inc. - Re: The $86,000 Spray Can - One page.

Attachment T - * June through July 1994 - Position descriptions for Director of Facilities and Assistant to the Director of Facilities, Kiefer UNO Lakefront Arena (KLA). David Monts' cover letter applying for the Director of Facilities position and three letters to David Monts from Marco Perez, UNO Assistant General Manager, KLA - Five pages.

Attachment U - * April 10, 1995 - Letter to File from John Ehlers, P.E., PPS Mechanical Engineer - Re: Fine Arts: Mixing Building - One page.

Attachment V - * February 24, 1995 - Letter to Gus Cantrell (GSC) from David Monts - Re: Building 16: Renovation of Southwest Wing for PPS - Two pages.

* This attachment (a paper copy) was given to a PD attorney

** This attachment was shown, but a copy was not given to a PD attorney

*** This attachment was written/generated by a PD attorney

**** This attachment was sent by facsimile to a PD attorney

***** This attachment was not shown and was not given to a PD attorney

END OF
USEFUL INFORMATION
IN UNDERSTANDING THIS ACCOUNT

ACCOUNT OF MEETINGS/CONVERSATIONS WITH UNIVERSITY OF NEW ORLEANS ATTORNEYS NAN ALESSANDRA AND DAVID KORN, BOTH WITH THE LAW FIRM OF PHELPS DUNBAR, AND DAVID A. MONTS, P. E., ELECTRICAL ENGINEER OF UNIVERSITY OF NEW ORLEANS PHYSICAL PLANT SERVICES DEPARTMENT

SUMMARY

I met Ms. Alessandra at a meeting held at UNO concerning ADA requirements. I mentioned to her that I had questions concerning project construction at UNO. She invited me to submit my questions to her. My questions were directed at code enforcement and the designers' responsibilities as it relates to code enforcement and other construction issues which occur in the University setting. I was trying to get answers to the PPS fundamental rhetorical design questions. The fundamental rhetorical design questions I and other professional staff members debated at almost every weekly staff meeting were: Why is the professional civil engineer (electrical engineer, mechanical engineer, or architect) not doing all the civil engineering (electrical engineering, mechanical engineering, or architectural) design and insisting that the other disciplines' design be done by the respective professional designer? Why is the PPS upper management (FHS and above) not insisting that the proper professional do all the design work for University projects? These PPS fundamental design questions are a way to raise the issue of who is going to "safeguard life, health, and property, and to promote the public welfare"? This question has been answered in the law, which states that only professional (licensed) designers are authorized to do design work in their particular discipline, and more narrowly the "registrants shall perform services only in the area of their competence". At PPS, upper management has overruled the professional designer's decisions. Upper management has allowed one design

professional to do the design work of other design professional disciplines. Upper management has allowed design work to be done by non-professionals.

As a response to my previous conversation with Ms. Alessandra at the ADA meeting, I received a fax on June 7, 1995, from Ms. Alessandra which was a copy of the Louisiana Revised Statute 40:1724, Building Permits and Occupancy Permits (Attachment A). I responded with questions by fax on June 7, 1995 (Attachment B) and a follow-up fax on June 7, 1995 (Attachment C). Ms. Alessandra's response entitled Engineering Issues at Physical Plant dated August 10, 1995 (Attachment D) came to me by U.S. mail. Later by telephone, I discussed the notations I made on a copy of her letter of August 10, 1995 (Attachment E). Ms. Alessandra sent, by U.S. mail, a supplement letter dated August 28, 1995 (Attachment F).

I had two meetings with the UNO attorneys, of the Phelps Dunbar (PD) law firm, discussing issues/concerns at PPS, in the offices of PD located in the Texaco building in downtown New Orleans. There were many phone calls and cancellations of meeting dates before we had the actual meetings.

The meeting schedule with PD was as follows:

I. The first meeting occurred with Ms. Nan Alessandra and Mr. David Korn of PD on September 13, 1995. At this meeting I presented my charges/issues/concerns/assertions about the operations of UNO and, in particular, PPS. I stressed the need for confidentially. I mentioned that some of my information may not be 100% accurate, because some of the information is secondhand; however, to the best of my knowledge this information is accurate. **I called for a complete independent investigation of**

these matters and, of course, any other matters the investigative team may uncover.

At this meeting, the written documents presented were:

Attachment G -	Copy not given to PD attorney
Attachment H -	Copy not given to PD attorney
Attachment I -	Copy given to PD attorney
Attachment J -	Copy not shown and not given to PD attorney
Attachment K -	Copy given to PD attorney
Attachment L -	Copy given to PD attorney
Attachment M -	Copy given to PD attorney
Attachment N -	Copy given to PD attorney
Attachment O -	Copy given to PD attorney
Attachment P -	Copy given to PD attorney
Attachment Q -	Copy given to PD attorney
Attachment R -	Copy given to PD attorney
Attachment S -	Copy given to PD attorney
Attachment T -	Copy given to PD attorney
Attachment U -	Copy given to PD attorney
Attachment V -	Copy given to PD attorney

II. The second meeting occurred with Mr. David Korn, of PD, on December 6, 1995. We reviewed what occurred at the first meeting and then listened to a seventy-five (75) minute recorded conversation of a meeting which took place on February 14, 1995. The February 14, 1995 meeting occurred in FHS's office and the participants were FHS, GSC, JMP and David Monts. The issue at this February 14, 1995 meeting was who was going to do the electrical design for the renovation of part of UNO Building 16. The rhetorical fundamental design question was raised. In a simpler, less accurate, form, the rhetorical fundamental design question was: Who at UNO is going to do civil engineering, electrical

engineering, mechanical engineering, and architecture? It turned out that GSC, a civil engineer, would do the electrical design and the architectural design. FHS did not object and saw nothing wrong with this arrangement. The recording illustrates the arrogance, ignorance of the design process, harassment, and intimidation employed by both FHS and GSC. For example, I was "fired" (long pause) then GSC added the phrase "from this project". Near the end of the meeting GSC stated that I was "still fired". FHS did not overrule GSC's firing of David Monts. **I called for a complete independent investigation of these matters and, of course, any other matters the investigative team may uncover.**

III. The third meeting was to occur with Mr. David Korn on July 19, 1996. I had made this appointment with Mr. Korn about three weeks previously. At this third meeting I was to present additional documents supporting my claims from the previous meetings. Mr. Korn of PD telephoned me at my home on July 17, 1996. He cancelled the appointment, stating that since I was on administrative leave (no mention of my pending termination) that there was the possibility of PD having to represent UNO in this matter and that PD believed it best to cancel the July 19, 1996 meeting. I asked Mr. Korn if Ms. Alessandra was aware of this decision and Mr. Korn responded affirmatively. I mentioned that I was still willing to talk with PD. Mr. Korn suggested that I put "it" in writing.

END OF SUMMARY

DETAILED ACCOUNT OF SEPTEMBER 13, 1995 MEETING

Upon receipt of an August 28, 1995 letter (Attachment F) from Ms. Alessandra, of PD, I called Ms. Alessandra's office to set up an appointment with her to discuss issues concerning University of New Orleans-Physical Plant Services (UNO-PPS). An appointment was made for September 13, 1995. At the beginning of the meeting I thanked her for her help in answering code construction issues. I had two other code related questions as follows:

1. Should UNO follow Orleans parish requirements (submit plans and specifications to Orleans parish) for all its projects for code enforcement, or should UNO rely on the Office of State Fire Marshall (SFM) (submit plans and specifications to SFM) for code enforcement, or should UNO be responsible for its own code enforcement, or is a combination of the above the correct method?
2. Where may I obtain law books or other sources of information to answer questions such as the above question?

Ms. Alessandra mentioned that Tulane and Loyola law libraries are open to the public and that she would have to research the answer to the above question number 1.

Before the appointment was made, and also during the meeting, I stressed my purpose was to illuminate what appears to me inappropriate actions on behalf of PPS management and other concerns or assertions that may need to be investigated. **I stressed the need for confidentiality because I, as well as other UNO employees, are afraid of reprisals.** Ms. Alessandra stated that our conversations were of a confidential nature and that she works for the Board of Regents, not for any particular individual at UNO, and that her mission is: "I work for the University, the best interests of the University." Ms. Alessandra said she might have to leave during our meeting because of another pressing matter. During our meeting,

someone called for Ms. Alessandra, and she left. Also in attendance at our meeting was Mr. David Korn, an attorney working for Ms. Alessandra. He would report back to her and we would meet in the future to discuss all issues.

I then requested to make a presentation of about 30-35 minutes, without interruptions, so I would be less likely to lose my train of thought. Ms. Alessandra agreed. I began the presentation by showing her my resume (Attachment G) and letters of praise of my work at UNO (Attachment H), attempting to demonstrate that I have credibility. I mentioned that I started working at UNO-PPS in January 1991, and thus, had over 4 ½ years of experience (as of September 1995) at UNO-PPS. Then I showed the proposed PPS organizational structure (Attachment I) recommended by the UNO Facility Renovation Process Team - Report and Recommendations memorandum dated March 29, 1995, which was headed by Professor Bill Galle of UNO's Department of Management, College of Business Administration.

NOTE: Refer to Attachment I at this time so that the subsequent information is meaningful.

I pointed out the structure called for a separation between Maintenance/Utilities; Engineering Design and Renovations; and Capital Outlay/Planning. However, Frank Schambach, a former maintenance manager, is now in charge of all three divisions. There is an inherent conflict between maintenance and design/renovation as to what proportion of scarce resources should be given to maintenance versus design/renovation. Maintenance usually is in a hurry to get something that is broken, fixed and working. Maintenance, also, performs preventative measures to keep equipment and facilities working efficiently for as long as possible. Good design, on the other hand, is trying to achieve long lasting results that meet the present needs and future needs of the

client (customer). A good design process takes many iterations to achieve optimum results. At present there has been no formal announcement of implementation of the Process Team's recommendations, (e.g. no meetings, no organizational chart changes, and no updating of job descriptions). However, it appears that FHS is occupying two positions (i.e. Facilities "Manager" and "Manager" of Maintenance/Utilities), John Michael Parnon (JMP) is Manager of Engineering Design and Renovations (now called Manager of Facility Renovations and Design), and GSC is "Manager" of Capital Outlay/Planning.

NOTE: The reason I have put quotation marks on the word "Manager" is because I believe the official titles of FHS is Director of PPS and GSC is Assistant Director of PPS. Also, my job description has not changed since I started work at PPS on January 7, 1991 as a replacement for Mr. Glenn D. Millet which states I report to the Assistant Director - Engineering and Construction who was GSC (Attachment J). In other words, no clear lines of authority or clear job duties exist for many staff members at PPS.

The rest of my presentation outlined my concerns and/or assertions about Frank Schambach (FHS), Director of PPS and his boss, Patrick M. Gibbs (PMG), Vice Chancellor, Business Affairs Administration.

I. FHS is not qualified by training or experience to be "Director" or "Facilities Manager" of PPS.
   - A. FHS has worked only in maintenance/ construction - no design experience.
   - B. FHS was a Math major at Tulane University.
   - C. A vacancy was created officially on December 31, 1990 by the retirement of the long standing

Director of PPS, Mr. Richard Carlstrom, P.E., a mechanical engineer. The so called "national search" for Director of PPS calls into question what kind of national search* comes up with a math major to head our maintenance/architectural/engineering department. Until the time of FHS's appointment to Director of PPS he was Acting Director from December 1990 to about June 1991. Mr. G. Lane Patton, Jr. was at the time Assistant Vice Chancellor For Business Affairs - Operations, reporting to PMG. Mr. Patton had direct administrative responsibility for the Department of PPS, as well as other departments at UNO. Mr. Patton was FHS's boss and Mr. Patton's boss was PMG. Mr. Patton left UNO in June 1993 under a cloud of suspicion, reportedly due to an EEOC suit involving statements he made in front of witnesses to a black female UNO employee. Thus, after the departure of Mr. Patton, PMG became FHS's direct boss. I presented APPA (Association of Physical Plant Administrators) Job Express (Attachment K) highlighting the fact that for a Director of PPS, or of even a lesser position, there was no mention of a math major being a proper qualification.

* Reportedly, JMP, AIA Architect, sent his resume along with a cover letter to Mr. Patton expressing his desire to be considered for the position of Director of PPS. JMP's letter was not solicited by UNO because there was no posting or announcement at UNO of the search for candidates to fill the Director of PPS vacancy. JMP was not given the courtesy of an

interview and received a generic form letter (the letter was written as thought JMP was not a UNO employee) thanking him for his interest in the position; however, another candidate was selected for the Director of PPS.

II. FHS permits harassment and intimidation. I presented two letters from UNO Chancellor O'Brien dated September 7, 1995 (Attachment L) and dated October 27, 1994 (Attachment M) stating the fact that achieving a safe environment is an important objective at UNO, and, also, that harassment and intimidation will not be tolerated at UNO.

A. A quote from Attachment L: "The University is very concerned for the safety of every person who comes on campus, especially our students, faculty and staff. We will remain vigilant in our efforts to make the UNO environment a safe one in which to work, study and play."

B. Two quotes from Attachment M:

1. "I want to state, in the strongest possible terms, that harassment of any type will not be tolerated on this campus."

2. "A fundamental principle of the University of New Orleans is that there be, to the maximum extent possible, a wholesome environment of mutual tolerance and respect, an environment free of hostility toward or harassment of any person or group based on sex, race, color, religion, age, national origin, sexual orientation or disability. Every member of this university community, is held strictly accountable for his or her behavior with regard to this standard."

C. There is a major problem in this regard with the Assistant Director of PPS, Mr. Gus S. Cantrell (GSC) who uses verbal abuse, swearing, yelling and other forms of out-of-control behavior frequently. Recent examples of GSC's behavior are:

1. April 1995, GSC to Ms. Elizabeth Moon, PPS personnel (Chief Clerk 1), yelling in hallway, "Don't ever interrupt me in the hall - I've got a thousand things on my mind - I can't be interrupted."

2. May 1995, GSC to Mr. Dan Falcone, PPS Project Coordinator, JMP, and FHS in a project update meeting in FHS's office, gave this advice on how to deal with a disenchanted professor - "This is what I would do --- you know what you do --- you get in that professor's face --- and you get him so mad that he won't talk to you --- then you squish him like a bad caterpillar."

3. July 20, 1995 letter to Mr. Henry A. Dillon, Jr., UNO Director of Human Resource Management from Mr. Mike G. Cole, Operating Engineer Superintendent, PPS, outlining problems with GSC (Attachment N). Some of the victims that prompted the above letter were Mr. Ron Smith, PPS Central Utilities Plant (CUP), Mr. Edwin Jackson, CUP, Mr. Cliff Villavaso, CUP, Mr. Anthony Holland, CUP and Mr. John Le Deaux of York International (HVAC supplier). It was reported, among other incidents that

occurred in a two week period, that GSC was driving a UNO truck on UNO campus grounds that were wet due to a recent rain at speeds exceeding 50 or 60 MPH. Two UNO employees were passengers in the truck. They reportedly asked GSC to either slow down the truck or stop the truck so they could get out of the truck. Another incident related to me by Mr. Cole was that outraged GSC had his fist clenched next to a UNO CUP employee's body and stated "Have you got a fucking problem?" Then he continued to cuss using "sucker" and "fuck" every third or fourth word as GSC spoke.

4. Other letters that show GSC's bizarre behavior are as follows:
   a. January 28, 1994 (Attachment O)
   b. December 10, 1993 (Attachment P)
   c. May 11, 1992 (Attachment Q)
   d. January 9, 1992 (Attachment R)
5. It was noted that most of GSC's bizarre behavior is verbal in nature.
6. It was noted that both Attachment N's and Attachment P's letters were given to Mr. Henry Dillon.
   a. The Attachment P letter was hand-delivered to Mr. Dillon and Mr. Angel of UNO/Human Resource Management at a meeting attended by Messrs. Henry Dillon, Myron Angel, Dan Falcone, PPS Project Coordinator, Allan Anderson,

PPS Electrical Engineer, Mike Parnon and David Monts. Mr. Dillon stated that it was up to FHS to deal with GSC's behavior, but to return to him or Mr. Angel if the problems continued.

b. JMP called Mr. Angel in my presence after we received a copy of Mr. Cole's letter (Attachment N) and after we had talked to Mr. Cole about the circumstances that prompted such a letter. JMP expressed to Mr. Angel that the problems with GSC are still continuing and that Mr. Cole has recent major examples of improper GSC behavior. Reportedly, Mr. Angel's response was that he is aware of Mr. Cole's letter and that he would discuss the matter with Mr. Dillon and determine what could be done.

7. It was noted that Mr. Dillon's supervisor is Mr. Pat Gibbs (PMG). It was also noted that Mr. Dillon, PMG, FHS and Mr. George E. Lewis, Jr., General Manager, Keifer UNO Lakefront Arena are friends and play golf together.

8. The following PPS employees have been victims of GSC's abuse:

a. Mr. Gene Aubin, Locksmith - Approximately October 1993, GSC told Mr. Aubin that he was doing a lousy job with keying. Verbally abused.

b. Ms. Cheryl Johnson, Word Processor Operator - In August 1992, GSC told Ms. Johnson to "get out of the chair, you can't handle it ... I'll do it myself." Ms. Johnson was in tears after this incident.

c. Ms. Elizabeth Moon (other incidents besides those mentioned above)

d. Mr. Mike Parnon (other incidents besides those mentioned above)

e. Mr. Vernon Toups, Utility/Energy Engineer (degree in Electrical Engineering) - In October 1995, GSC was screaming and yelling over the telephone about a project (boiler replacement with asbestos abatement) handled by Mr. Toups. GSC thought something was improper and cussed Mr. Toups using repeatedly, "God damn mother fucker ---" and "fuckin ---".

f. Ms. Hooi-Gaik Peterson, Drafting Technician - In January 1995, Ms. Peterson was verbally

assaulted by GSC about a drafting job. GSC made Ms. Peterson shake physically (hands trembled).

g. Mr. Delbert Strong, Project Coordinator - Approximately April 1993, GSC verbally abused Mr. Strong in front of everyone in the office for making a mistake regarding UNO Child Care Center building keying analysis (review of drawings). It turned out Mr. Strong was not in error.

h. Mr. Pat Beaver, Electrician/Foreman - In October 1995, GSC screamed "mother fucker" ... "mother fucker", etc. over the PPS radio system (walkie-talkie) when electrical power was shut down in the building in which GSC has his office. GSC was using his computer at the time. It turns out that a memo was circulated to everyone, including GSC, giving notice of the power outage; however, GSC "forgot". Everyone (over 30 people) on the radio system heard the profane language used by GSC.

i. Mr. Glenn Millet, Electrical Engineer - Many verbal abuse incidents occurred during Mr. Millet's tenure at UNO from

Spring 1985 to October 31, 1989. One incident in 1988, Mr. Millet was yelled at by GSC for doing something he didn't do. Mr. Millet was publicly embarrassed and harassed in front of all his peers. GSC was forced to apologize by the then Director of PPS, Richard Carlstrom. Mr. Millet had an exit interview with PMG in October 1989 where he explained the history of GSC's abuse. Mr. Millet reported to me that PMG defended GSC.

j. Mr. Jose Mauricio, Utility/Energy Engineer - Mr. Mauricio's tenure at UNO was from about 1986-1990. Mr. Mauricio had problems with GSC and on several different occasions told GSC, and others, that GSC "did not know what he was doing," when it came to management. What Mr. Mauricio was referring to was the use of fear, intimidation, and verbal assaults on employees in order to achieve good work performance from the employees.

k. Mr. David Monts, Electrical Engineer - On February 14, 1995 a recording was made of the "firing" of David Monts at a meeting with FHS, GSC, JMP

and David Monts. (See SUMMARY Item Roman Numeral II page 9.)

III. FHS/PMG do not comply with State bid law.

A. Pest control contract (Attachment S) - Reportedly this contract was bid in such a manner that higher costs were incurred without any measurable benefit to UNO. PPS communicates closely with the UNO Purchasing Department, and thus, PPS can, and does, persuade purchasing to make changes to the UNO contract document either on a case basis or a generic basis.

B. Honeywell Controls - FHS reportedly told the Honeywell representative that UNO was using Johnson Controls and although Honeywell may be less expensive and better "it's not my money" at stake.

C. Mr. Roger Bailey of Bailey and Kline Architects - Mr. Bailey had serious disputes on the conduct of FHS concerning a project where Mr. Bailey was contracted to be the architect of record.

D. Privatization of a UNO housing contract appears to be a design/build contract which violates Louisiana law.

IV. FHS/PMG do not comply with State laws in hiring. They allow appointments to be made when the merits of other candidates are superior to the candidate selected or the candidate selection process was closed to the public in that there was no job announcement circulated at UNO. Examples:

A. There appears to have been a non-competitive selection of an outside architectural consultant on the UNO Research Park.

B. Apparently the consultant hired to perform the UNO Master Plan was not qualified by training, unlike Mr. Ceasor Pelli at the University of Texas.

C. Mr. Tony Gendusa, AIA Architect, has been selected without the benefit of any type of selection criteria or without the benefit of an architectural selection committee by FHS to do many renovation designs. Mr. Gendusa is on FHS's telephone speed dial.

D. Keifer Lakefront Arena Facilities Director, Mr. David Lendermon was selected over other more meritorious candidates (e.g. Mike Cole, Charles Thibodeaux and David Monts) (Attachment T letters). The successful candidate for Director of Facilities - Kiefer UNO Lakefront Arena (D of F-KLA) was David Lendermon, who does not have the proper license, training, or experience to meet the job requirements per the job position description. This is not a reflection of bad character on the part of Mr. Lendermon, just that Mr. Lendermon does not possess the necessary prerequisites for the D of F - KLA position. For example, from the position description the D of F - KLA is responsible for the "physical operation of the Arena" and that responsibility includes "power plant operations", "HVAC (heating, ventilating, air conditioning) maintenance", and "building maintenance", among other duties. This description would require, as a minimum, a first class operating engineer's license issued by the City of New

Orleans or a state licensed engineer. Mr. Lendermon has neither license, which I discovered sixteen months after Mr. Lendermon's hiring.

At least two other candidates, who applied for the D of F - KLA position, Mike Cole and Charles Thibodeaux, possess the necessary operating engineer's license and are well qualified by having advanced training and years of experience. I, also, applied for the D of F - KLA position. As Attachment T demonstrates I received a letter dated July 15, 1994 to David Monts from Marco Perez, Assistant General Manager - KLA, stating that I was not selected for an interview. Upon receipt of this letter I made a telephone protest to Mr. Perez which resulted in a subsequent telephone interview. The telephone interview occurred from approximately 10:00 AM - 10:30 AM July 22, 1994. I could tell that Mr. Perez was in a hurry to complete the interview and Mr. Perez told me that the KLA management wanted a "decision on this matter today". It should be pointed out that Mr. Lendermon had been appointed "Acting" D of F - KLA for several months before Mr. Lendermon was appointed D of F - KLA. Mr. Lendermon was "Acting" D of F - KLA during the search and interview process. I believe the interview process was a sham and that the selection of Mr. Lendermon was predetermined.

E. Mr. Dan Falcone, PPS Project Coordinator - No Announcement *

F. Ms. Amy Carbonette, PPS Project Coordinator - No Announcement *

G. Mr. Frank Schambach, PPS Director - No Announcement * (See Item Roman Numeral I.C. pages 12-13)

H. Mr. Gus Cantrell, PPS Capital Outlay - No Announcement *

I. Mr. Ricardo Contreras, PPS Civil Engineer, Capital Outlay - No Announcement *

J. Ms. Wendy Beaver, PPS Civil Engineer, Capital Outlay - No Announcement *

* Since there was no announcement, superior candidates might have been overlooked.

V. **FHS practices architecture/engineering without a license, FHS allows other unlicensed persons to practice architecture/engineering, and this practice jeopardizes the health and safety of the public.** Upper management (FHS and above), by their actions, suggest they do not have an understanding of the design process. In particular, for example, management's disregard or countermanding the decisions of the design professionals with the weak argument that "we do not have the budget for this 'extra'" or "we do not need this" item although the design professional in his/her opinion believes/knows that it is in the best interest of the University to include the item. For example:

(1) the item is a safety issue in order to meet code,

(2) the item is a safety issue that the code does not address, however, it should be a part of the design,

(3) the item is recognized by the industry as a good practice, or

(4) the item will reduce maintenance expenditures and, thus, the long term gain outweighs the initial expense.

Upper management allows design work to be done by non-professionals creating a liability for the University. Upper management allows one design professional to do the work of other design professional disciplines. The fundamental rhetorical design questions raised at almost every staff meeting were: Why is the professional civil engineer (electrical engineer, mechanical engineer, or architect) not doing all the civil engineering (electrical engineering, mechanical engineering, or architectural) design and insisting that the other disciplines' design be done by the respective professional designer? Why is the PPS upper management (FHS and above) not insisting that the proper professional do all the design work for University projects? These PPS fundamental design questions are a way to raise the issue of who is going to "safeguard life, health, and property, and to promote the public welfare"? This question has been answered in the law, which states that only professional (licensed) designers are authorized to do design work in their particular discipline, and more narrowly the "registrants shall perform services only in the area of their competence". Upper management administers/directs the work of outside professional consultants and the subsequent contractors without the benefit of the advice (or countermands the advice) of the University of New Orleans professional staff. Upper management directs contractors to do additional work without the benefit of the advice (or countermands the advice) of the contracted professional architect and/or engineer of record. Not only are these practices bad management; but, also, against University of New Orleans' written policy and job descriptions; and may even be illegal.

The following two documents give written testimony. In Case A (Attachment U) the directions of the PPS

Electrical Engineer and the National Electrical Code was not followed. In Case B (Attachment V) the PPS Electrical Engineer was "fired" from this project and the Civil Engineer, GSC, was now the Electrical Designer as well as the Architect. This meeting/incident was recorded on February 14, 1995 and was played back for Mr. Korn, of PD, on December 6, 1995. (See SUMMARY Item Roman Numeral II page 9) In Case C reportedly FHS was ordering the architect of record to do what FHS wanted regardless of what was in the "best interests of the University". Also, reportedly due to budget limitations the electrical engineer of record was not involved in the audio/visual design.

A. April 10, 1995, John Ehlers to File letter (Attachment U) with routing to FHS, JMP and David Monts. Quote: "The project, therefore, will be wired without new wiring, green grounding wire, and the additional required exit signs."

B. February 24, 1995, David Monts to Gus Cantrell letter (Attachment V), with photocopies to JMP and FHS. Quote: "Per the above mentioned meeting, I am not responsible for the electrical design of this project."

C. Mr. Roger Bailey of Bailey & Kline Architects - Mr. Bailey objected to FHS ordering him to include or exclude items in his design of the renovation of UNO Business Administration Building Auditorium. Mr. Bailey was the contracted architect for this project, the architect of record. Mr. Bailey thought that it was in the best interest of the University to do other than what FHS ordered. On this particular project I objected to the Electrical Engineer of record, Mr. Gerald Burley, P.E., hired by Mr. Bailey, not being included on the

audio/visual design of this project. Instead the audio/visual design was done by non-professionals, UNO's Department of Instructional Media and Technology. Mr. Bailey may have other disputes with FHS.

VI. FHS practices bad management. I stated to the attorney, Mr. Korn, these items are not nearly as important as the above items. However, it adds to the complete picture.

A. FHS does not provide leadership/direction. He has an ad-hoc, laissez-faire approach to management. Every working day FHS has a parade of PPS employees seeking an answer to a particular problem. The problem can either be major or minor; FHS will give his answer to the PPS employee without consulting with the employee's supervisor(s). Therefore, there is no encouragement for employees to seek answers from their immediate supervisor(s) first. Possibly this management style can get by in a maintenance environment, but not in a design environment.

B. FHS does not set or meet long range deadlines. There is no scheduling of maintenance work except during a weekly meeting, usually on Friday, to determine the next weeks work. Therefore, "emergencies" arise where proper planning would have avoided the emergency.

C. FHS does not distinguish between good and bad work performance.

D. FHS does not reward with praise or salary increases, but is quick to question an employee's behavior: "Why did you do that?" is a typical question. However, GSC/FHS/PMG do get salary increases.

E. FHS does not provide or insist that clear lines of authority and clear job duties exist for the PPS staff. (See Introduction of Detailed Account of September 13, 1995 Meeting, page 12)

F. FHS does not set any goals for PPS or establish any programs or methods to accomplish goals. PPS is like the Fire Department waiting for the telephone to ring and then reacting to the situation. PPS does not take a proactive approach. Instead of encouraging the PPS staff to communicate with the UNO community, both formally and informally, and be involved in the initial planning stages, PPS upper management discourages involvement stating that we do not have the time to "waste," on academia or on any of their "dream" projects. Therefore, PPS lets other members of the UNO community identify the problems/issues (both maintenance and design) often when the problems/issues are at the crisis stage or near crisis stage. This creates a panic state of mind to "drop everything" and work on a particular project exclusively and fast which causes quality to suffer. There is not sufficient time to think of the many possible solutions and pick the best solution, rather the designer is forced to adopt his first solution. This situation also causes costs to increase:

1) by not using time wisely,
2) by specifying products and using a first draft design which is more expensive than necessary to accomplish the intended result,
3) by delaying other important projects, and
4) since the project is on the "fast" track the bid process is compressed creating higher costs:

a) the contractor does not have sufficient time to review the contract document (bid information, technical specifications, and drawings) thoroughly to determine if there are any alternative means or methods of construction that the professional designers should consider. The alternative(s) would be discussed at the pre-bid conference where the assembly of contractors and designer(s) meet to discuss any and all issues related to the construction project. Often, contractors have suggestions that work as well or better than originally specified materials and/or have better methods of installation than originally specified. Thus, the contractor's suggestion(s) may save either time (labor) or material cost. This important contractor input would be incorporated into the contract document through an addendum, however, the contractor input is lost when the bid process is compressed.

b) the contractor does not have sufficient time to thoroughly check his suppliers for availability and pricing of construction materials, thus, the contractor makes conservative estimates on material prices and the labor hours it takes to install "unfamiliar" construction materials (higher costs).

c) since the construction project must be completed quickly, the contractor will have to figure labor overtime hours (higher costs) and material shipments

may have to be expedited (higher costs) in order to meet the "tight" schedule.

After my presentation I reviewed the documents with Mr. Korn, of PD. Mr. Korn asked many questions in an attempt to understand, clarify, and determine if he had understood what was stated. **I asked for a complete independent investigation of these matters, and, of course, any other matters the investigative team may uncover.** I mentioned that my position at UNO gives me access to only a small fraction of the activities of the Business Affairs Administration. I mentioned that I believe there is a "good old boy" network between GSC, FHS, and PMG. I mentioned I would be willing to talk to the UNO Chancellor about these matters if that would help start an independent investigation. Mr. Korn stated he would report back to Ms. Alessandra and that he or she would report back to me.

NOTE: The first meeting with PD was very cordial. I felt the attorneys were genuinely interested in my report. Mr. Korn took notes during the meeting. My presentation was totally verbal except for the attachments. I did not share my notes with the PD attorneys.

END OF
DETAILED ACCOUNT OF SEPTEMBER 13, 1995 MEETING

Appendix G

STATE OF LOUISIANA
PARISH OF ORLEANS

AFFIDAVIT OF JOHN M. EHLERS

BEFORE ME, the undersigned Notary Public, personally came and appeared:

JOHN M. EHLERS

who, after first being duly sworn by me, Notary Public, did depose and say:

1. I am domiciled in the Parish of Orleans, State of Louisiana.

2. I am of sound mind and body and am competent to testify as to the matters stated herein.

3. I received a Bachelor Arts degree in German with minors in Biology and History from Louisiana State University at New Orleans in 1972; I received a Master of Arts degree in German with minors in French, Norwegian, and Latin from Tulane University in 1974; I received a Bachelor of Science degree in Mechanical Engineering from the University of New Orleans in 1982; I received a Professional Engineer license in Mechanical Engineering from the State of Louisiana in 1989; and I am nine credit hours short of a Bachelor of Science degree in Civil Engineering.

4. At various times between 1982 and the present, I worked in the aerospace, construction, and water well and plumbing system industries as a Mechanical Engineer.

5. From May 1994 until April 1997, I worked full time as a Mechanical Engineer in the Physical Plant Services Department ("PPS") of the University of New Orleans ("UNO") under the supervision of Frank H. Schambach, Gustave S. Cantrell, and John Michael Parnon.

8. As a Mechanical Engineer employed by UNO, I understood it to be my professional and ethical duty to protect the health, safety and welfare of the public by overseeing the mechanical design of projects on campus to ensure safe, proper and economical design.

6. During the time I worked at UNO, I attended departmental meetings held by my supervisors.

7. From March 1995 until July 1996, I worked closely with David A. Monts, who is an Electrical Engineer, on PPS construction and renovation projects.

24. Mr. Monts is one of the most competent, industrious, and conscientious Engineers I have ever worked with.

9. During the time I worked at UNO, PPS was understaffed, all of the design professionals employed in PPS were underpaid, and all of them, including Mr. Parnon, complained about these facts during departmental meetings and at other times.

10. During the time I worked at UNO, PPS management often had unrealistic expectations as to the number of projects Mr. Monts or I could complete properly and safely and still be on schedule.

12. Many times during the time I worked at UNO, PPS management would instruct me or Mr. Monts to stop working on one project and to start another project.

13. Despite the unrealistic expectations of PPS management, neither Mr. Monts nor I ever failed to complete a project in the best and safest manner possible under the circumstances.

14. During the time I worked with Mr. Monts at UNO, Mr. Monts was never slower than other design professionals at completing any task.

16. During the time I worked with Mr. Monts at UNO, Mr. Monts never "disrupted" a departmental meeting in any way or otherwise interfered with his co-workers'

performance of their duties. To participate in a meeting is not "disrupting" a meeting.

17. To my knowledge, neither Mr. Monts' behavior or performance nor my behavior or performance was ever evaluated or appraised in writing at any time during the time I worked at UNO. Not even at "raise" time was performance appraised.

18. To my knowledge, Mr. Monts was never reprimanded, counseled, or otherwise disciplined for his behavior or performance at any time during the time I worked with him at UNO, nor did Mr. Monts' behavior or performance ever warrant a reprimand, counseling, or discipline.

19. While employed at UNO, both Mr. Monts and I often became upset and complained at departmental meetings about the failure and refusal of PPS management to heed our recommendations relating to issues of safety and economy in electrical and mechanical designs for campus projects and about not being consulted as to electrical and mechanical design issues on campus projects. Most of the items Mr. Monts or I became upset about and complained about at departmental meetings involved Mr. Schambach's or Mr. Cantrell's decisions to overrule the directives of me or Mr. Monts relating to health and safety issues and economy issues in the Electrical Engineering or Mechanical Engineering design of campus projects.

20. The baseball stadium concession stand had a roster of design omissions and design faults, all of which created fire safety hazards. When I pointed out these omissions and design faults to Mr. Schambach, Mr. Schambach said, "John, I built that building for 'x' dollars. I don't have any more budget for it." I complained about this at departmental meetings.

21. When I became aware that the Liberal Arts Building heating and air conditioning ductwork created a serious health hazard and recommended remedial action, Mr. Schambach refused to implement my recommendations for

budgetary reasons. I complained about this at departmental meetings.

22. At a campus social function in or about the Fall of 1996, I approached Chancellor Gregory O'Brien about the need for remedial work on the Liberal Arts Building heating and air conditioning ductwork. Shortly thereafter, Mr. Schambach said to me, "John, I understand you talked to the Chancellor. If you talk to that man again your ass is fired!" I complained about this at departmental meetings.

23. When Mr. Monts recommended that new and additional required exit signs and new wiring be installed on the Fine Arts Mixing Building project, Mr. Schambach refused to approve the recommendations for budgetary reasons. Both Mr. Monts and I complained about this at departmental meetings.

24. When, on April 10, 1995, I wrote and circulated a letter to the file documenting Mr. Schambach's refusal to approve the recommended changes to the Fine Arts Mixing Building project, Mr. Schambach told me to stop writing letters to the file. I complained about this at departmental meetings.

25. On the Business Administration 165 project, an electrician named Gregory Randolph, with Mr. Schambach's knowledge, performed the wiring for audio visual without consulting PPS. Mr. Monts complained at departmental meetings that in so doing, both Mr. Randolph and Mr. Schambach were practicing electrical engineering without a license.

26. On the Building 16 Warehouse Renovation project, which was for Mr. Cantrell's offices, Mr. Cantrell dictated the design of the heating and air conditioning system. Mr. Cantrell told me: "You will tie into this old duct system," and he also insisted upon installing a grossly overpowered air conditioning unit. Mr. Cantrell's directives resulted in a horrendously expensive, inefficient heating and air conditioning system. I complained about this at departmental meetings.

27. Work orders which Mr. Monts and I submitted to Amy Carbonette, an architect working in PPS for Mr. Schambach, for the repair of unsafe and unsanitary conditions on the UNO campus were not completed in a timely manner. Once Ms. Carbonette said to me, "I put your work order at the bottom." My understanding was that Ms. Carbonette did this and said this because she was angry at Mr. Parnon and therefore wished the untimely completion of work orders submitted by Mr. Parnon's staff to reflect poorly on Mr. Parnon and his staff. Mr. Monts and I complained about this at departmental meetings.

28. In or about November 1994, I wore a vest to work one day. At that time, Mr. Cantrell told me we had to go out into the parking lot. Once in the parking lot, Mr. Cantrell said, "I have a problem with you. You're wearing a vest. I fired a guy for wearing a vest." At that point, I became convinced that Mr. Cantrell was severely mentally imbalanced.

29. During the time I worked at UNO, the actions and words of Mr. Schambach and Mr. Cantrell created an atmosphere of coercion and fear among the staff members of PPS, and I firmly believed that Mr. Schambach would fire anyone who complained too loudly about his or Mr. Cantrell's acts. Indeed, as noted above, Mr. Schambach told me expressly that if I talked to the Chancellor, "your ass is fired!"

30. During the Building 16 Warehouse Renovation project, Mr. Cantrell told me, "You know that David Monts? I fired him!" At that time, I understood from Mr. Parnon and Mr. Monts that Mr. Cantrell had "fired" Mr. Monts from the project for complaining about Mr. Cantrell's decision to change Mr. Monts' electrical design for the project without consulting Mr. Monts. Mr. Monts complained about this at departmental meetings.

31. Subsequent to the time Mr. Cantrell "fired" Mr. Monts from the Building 16 Warehouse Renovation project, Mr. Monts told me he was going to see a lawyer with questions about code enforcement and other issues relating to Mr.

Schambach's and Mr. Cantrell's frequent decisions to overrule the directives of PPS design professionals relating to health and safety issues in the Electrical Engineering or Mechanical Engineering design of campus projects. Mr. Monts then told this to Mr. Parnon at a departmental meeting with me and other staff members present, and although Mr. Parnon did not appear happy about it, he okayed Mr. Monts' decision. Afterwards, Mr. Parnon told me, "I wish I had the balls to do that." Later on, I overheard Mr. Schambach angrily telling someone on the telephone, "Dave went to go see an attorney!"

32. When Mr. Monts was terminated, we were all shocked. Mr. Parnon told me, "Frank made me terminate David." Mr. Parnon also said that Frank laughed about it.

33. All of the above and foregoing statements are made on my own personal knowledge.

/s/ John M. Ehlers, P.E.
JOHN EHLERS, P.E.
LIC. # 23702

SWORN TO AND SUBSCRIBED
BEFORE ME, NOTARY PUBLIC, THIS
27 DAY OF NOVEMBER, 1999.

/s/ [illegible]
NOTARY PUBLIC

Appendix H

STATE OF LOUISIANA
PARISH OF ST. TAMMANY

AFFIDAVIT OF ALLAN W. ANDERSON

BEFORE ME, the undersigned Notary Public, personally came and appeared:

ALLAN W. ANDERSON

who, after first being duly sworn by me, Notary Public, did depose and say:

1. I am domiciled in the Parish of St. Tammany, State of Louisiana.

2. I am of sound mind and body and am competent to testify as to the matters stated herein.

3. I received a Bachelor of Science degree in Electrical Engineering from the University of Illinois in 1953; I received a Master of Science degree in Electrical Engineering from the University of Denver in 1961; I received a Professional Engineer license in the State of Colorado in 1970; and I received a Master of Divinity degree from Baptist Seminary in New Orleans in 1989.

4. At various times between 1953 and 1989, I worked in the military, transportation, and aerospace industries as an Electrical Engineer or Engineering Supervisor.

5. From November 1989 until June 1996, I worked full time or part time as an Electrical Engineer in the Physical Plant Services Department ("PPS") of the University of New Orleans ("UNO") under the supervision of Richard Carlstrom, Frank H. Schambach, Gustave S. Cantrell, John Michael Parnon, and David Monts. NOTE: There were times during this period I left to do ministry or to take classes.

6. During the time I worked at UNO, I often attended departmental meetings held by my supervisors.

7. During part of the time I worked at UNO, I shared an office with David A. Monts, who is also an Electrical Engineer, and worked for Mr. Monts on electrical design projects beginning in January 1991.

8. As Electrical Engineers employed by UNO, both Mr. Monts and I understood it to be our professional and ethical duties to protect the health, safety and welfare of the public by overseeing the electrical design of projects on campus to ensure safe, proper and economical design.

9. During the time I worked at UNO, PPS was understaffed, all of the design professionals employed in PPS were underpaid, and all of them, including Mr. Parnon while he was my supervisor, complained about these facts at departmental meetings and at other times.

10. Mr. Parnon often encouraged Mr. Monts to complain to upper management about staffing and salary issues and their effect on health and safety issues, as well as about harassment of others by Mr. Cantrell.

11. During the time I worked at UNO, PPS management often had unrealistic expectations as to the number of electrical engineering projects Mr. Monts and I could complete properly and safely and still be on schedule.

12. Many times during the time I worked at UNO, PPS management would instruct me or Mr. Monts to stop working on one project and to start another project.

13. Despite the unrealistic expectations of PPS management, Mr. Monts never failed to complete a project in the best and safest manner possible under the circumstances.

14. During the time I worked at UNO, Mr. Monts was never slower than other design professionals at completing any task.

15. In Mr. Schambach's deposition dated August 18, 1999 on pages 67 and 68, Mr. Schambach complains that it took Mr. Monts "an excessive amount of time to lay out the design"

of the soccer field lighting project. However, Mr. Monts did not design the soccer field lighting project; I did, under Mr. Monts' supervision. Furthermore, this project required extensive coordination with the lighting vendor, electricians, civil engineers and contractor. Also, we had to do the paper work to purchase materials. It is my opinion that we did not take an excessive amount of time.

16. During the time I worked at UNO, Mr. Monts never disrupted a departmental meeting in any way or otherwise interfered with his co-workers' performance of their duties.

17. To my knowledge, neither Mr. Monts' behavior or performance nor my behavior or performance was ever evaluated or appraised in writing at any time during the time I worked at UNO.

18. To my knowledge, Mr. Monts was never reprimanded, counseled, or otherwise disciplined for his behavior or performance at any time during the time I worked at UNO, nor did Mr. Monts' behavior or performance ever warrant a reprimand, counseling, or discipline. We were told that if we were unhappy with our salary to get an offer of higher pay and they would try to match it.

19. While employed at UNO, I assisted Mr. Monts in the electrical design of the Building 16 warehouse renovation project.

20. My understanding is that Mr. Cantrell "fired" Mr. Monts from the Building 16 warehouse renovation project and changed the electrical design prepared by Mr. Monts and I.

21. To the extent Mr. Cantrell changed the electrical design of the Building 16 warehouse renovation project without consulting the Electrical Engineers, Mr. Cantrell's actions were improper.

22. Due to Mr. Cantrell's actions, I never inspected the final electrical design of the Building 16 warehouse renovation project.

23. While employed at UNO, Mr. Monts and I often became upset about the failure and refusal of PPS management to heed our recommendations relating to issues of safety and economy in electrical designs for campus projects and about not being consulted as to electrical design issues on campus projects.

24. Mr. Monts is one of the most competent, industrious, and conscientious Electrical Engineers I have worked with.

25. All of the above and foregoing statements are made on my own personal knowledge.

/s/ Allan W. Anderson
ALLAN W. ANDERSON

SWORN TO AND SUBSCRIBED
BEFORE ME, NOTARY PUBLIC, THIS
17th DAY OF NOVEMBER, 1999.

/s/ [illegible]
NOTARY PUBLIC

Appendix I

University of
New Orleans
Physical Plant Services *SHAPING OUR FUTURE*

New Orleans
Louisiana 70148
(504) 286-6363

July 15, 1996

Mr. David A. Monts, P.E.
Electrical Engineer
Facility Renovations and Design

Dear Mr. Monts:

You are serving in a non-classified position as an Electrical Engineer in the Facility Renovations and Design Division of the Physical Plant Services Department. A pretermination hearing was held on Monday, July 15, 1996 to determine if there was sufficient cause to terminate your employment with the University.

At the pretermination hearing attended by yourself and the undersigned we discussed your continued disruptions of departmental meetings and your negative attitude with regards to your employment with the University. Your supervisor, John Michael Parnon, has on several occasions discussed with you your need to improve your attitude, including, but not limited to, disrupting weekly staff meetings by complaining and arguing about non-project related matters. He has also recommended that you pursue employment elsewhere.

It is the decision of the management of this Department, based on our pre-termination hearing with you, that you be, and are

hereby, given thirty days notice that your services with the University will be terminated effective the close of business August 15, 1996. You will be placed on paid administrative leave from the date of this notice until the termination date.

You have the right to appeal the decision through the campus grievance procedure.

Sincerely,

/s/ [illegible]
John Michael Parnon, Manager
Facility Renovations and Design

/s/ [illegible]
Frank H. Schambach
Director of Physical Plant

Supreme Court, U.S.
FILED
OCT 4 2002
OFFICE OF THE CLERK

No. 02-329

In the

Supreme Court of the United States

DAVID A. MONTS,

Petitioner,

v.

BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AGRICULTURAL AND MECHANICAL COLLEGE, d/b/a UNIVERSITY OF NEW ORLEANS, PATRICK M. GIBBS, FRANK H. SCHAMBACH, and GUSTAVE S. CANTRELL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE LOUISIANA FOURTH CIRCUIT COURT OF APPEAL

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Barbara L. Bossetta (#20125)
Department of Justice
Attorney General's Office
601 Poydras Street, Suite 1725
New Orleans, LA 70130
Telephone: (504) 599-1200

Alexander M. Mcintyre, Jr. (17053)
Counsel of Record
Phyllis Guin Cancienne (19605)
LOCKE LIDDELL & SAPP, LLP
(A Professional Law Corporation)
Pan American Life Center
601 Poydras Street, Suite 2400
New Orleans, LA 70130
Telephone: (504) 558-5100

Attorneys for Respondents

CURRY & TAYLOR • (202) 393-4141 • HTTP://USSCINFO.COM

PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

The parties to the proceeding before the Louisiana Fourth Circuit Court of Appeal were:

- David A. Monts, Petitioner;
- Board of Supervisors of Louisiana State University and Agricultural and Mechanical College d/b/a University of New Orleans, Respondent;
- Patrick M. Gibbs, Respondent;
- Frank H. Schambach, Respondent;
- Gustave S. Cantrell, Respondent;

In addition, the following filed an *amicus curiae* brief in the Louisiana Supreme Court:

- National Society of Professional Engineers; and
- Louisiana Engineering Society.

This Brief in Opposition is submitted on behalf of a state governmental entity and three individuals. Rule 29.6 of the Rules of the United States Supreme Court is therefore inapplicable.

TABLE OF CONTENTS

Page

Parties to the Proceeding and Statement Pursuant to Rule 29.6 i

Table of Contents ii

Table of Cited Authorities iv

Reasons for Denying the Writ 1

I. Introduction 1

II. The Facts Adduced in the District Court and Found by the Court of Appeal do not Support Petitioner's Contentions 3

III. Petitioner's Characterizations of the Opinion of the Fourth Circuit Court of Appeal Are Misleading 5

A. The Appeal Court Did Not Rule That the Internal Nature of Monts's Communication Rendered it Unprotectable *Per Se* 5

B. The Appeal Court Did Not Rule That Reports of Building Safety Code Violations are *Per Se* Unprotected Speech 6

IV. The Fourth Circuit Correctly Found Monts's Speech was Not a Matter of Public Concern..... 8

V. The Fourth Circuit Properly Affirmed The Trial Court's Granting of Summary Judgment..... 14

VI. Conclusion..... 21

TABLE OF AUTHORITIES

Page

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202
(1986) 17

Barns v. McDowell,
848 F.2d 725 (6th Cir. 1988) 14

Bell v. Touro Infirmary, Inc.,
785 So.2d 926 (La. App. 4 Cir. 2001) 20

Benningfield [v. City of Houston,
157 F.3d 369 (5th Cir. 1998)] 13

Brown v. Manhattan Life Ins. Co.,
791 So.2d 74 (La. 2001) 16, 17

Brown v. Texas A&M University,
804 F.2d 327 (5th Cir. 1986) 15

Celotex Corp. v. Catrett,
477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265
(1986) 17

Chesser v. Sparks,
248 F.3d 1117 (11th Cir. 2001) 9

Conaway v. Smith,
853 F.2d 789 (10th Cir. 1988) 14

Connick v. Myers,
461 U.S. 138, 103 S.Ct. 1684, 75 L.Ed.2d 708
(1983) ..... *passim*

Coughlin v. Lee,
946 F.2d 1152 (5th Cir. 1991) 6, 17

Feldman v. Philadelphia Housing Authority,
43 F.3d 823 (3rd Cir. 1994) 15

Givhan v. Western Line Consol. School District,
439 U.S. 410, 99 S.Ct. 693, 58 L.Ed.2d 619 (1979)..... 6

Kokkins v. Ivkovich,
185 F.3d 840 (7th Cir. 1999) 8

Minneapolis, St. P. & S.S.M Ry. Co. v. Rock,
279 U.S. 410, 49 S.Ct. 363 (1929). 1

Mishk v. Destafano,
5 F.Supp.2d 194 (S.D.N.Y. 1998) 10

Mix v. University of New Orleans,
609 So.2d 958 (La. App. 4 Cir. 1992) 3, 9

Monts v. Bd. of Sup'rs of La. State Univ.,
812 So.2d 787 (La. App. 4 Cir. 2002) .....*passim*

Morris v. Crow,
142 F.3d 1379, 1382 (11th Cir. 1998)..... 10

Mount Healthy City School Dist. v. Doyle,
429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1997)
..... 2

Murray v. Gardner,
741 F.2d 434 (D.C. Cir. 1984). 14

Nero v. Hospital Authority of Wilkes County,
86 F.Supp.2d 1214 (S.D. Ga. 1998) 10

Pappas v. Guiliani,
290 F.3d 143 (2nd Cir. 2002)..... 8

Ross v. Moffitt,
417 U.S. 600, 94 S.Ct. 2437, 41 L.Ed.2d 341
(1974) 3, 16

Teague v. City of Flower Mound, Texas,
179 F.3d 377 (5th Cir. 1999) 6, 13

Terrell v. University of Texas System Police,
792 F.2d 1360 (5th Cir. 1986) 12

Thompson v. City of Starkville,
901 F.2d 456 (5th Cir. 1990) 15

Vincent v. City of Talladega,
980 F.Supp. 410 (N.D. Ala. 1997) 12

Waters v. Churchill,
511 U.S. 661, 114 S.Ct. 1878, 128 L.Ed.2d 686
(1994) 2, 9

OTHER AUTHORITIES

28 U.S.C. §1257(a) 1

Rule 12, Federal Rules of Civil Procedure 16

Rule 29.6, Federal Rules of Civil Procedure i

Rule 56, Federal Rules of Civil Procedure 16

La. Code Civ. P. art. 927 16

La. Code Civ. P. art. 966 16

La. Code Civ. P. art. 2747 20

REASONS FOR DENYING THE WRIT

I. Introduction.

The sole question presented by the Petition is whether a public employee's communications to his employer concerning building code violations constitute constitutionally protected free speech. *See* Petition ("Pet.") at i. Petitioner's answer to that question is, "always," while Respondents and the Court of Appeal respond, "sometimes." Respondents respectfully submit that the Court of Appeal is correct, and the Petition for Writ of Certiorari should be denied.[1]

Petitioner suggests that in affirming the district court's grant of summary judgment against him, the Louisiana Fourth Circuit Court of Appeal committed fundamental constitutional errors by ruling that a public employee's internal complaints about gross health and safety code violations, purportedly creating a virtual certainty of mass loss of life, cannot constitute constitutionally protected free speech. However, Petitioner utterly misperceives and misstates the Opinion of the Court of Appeal. Rather, in its Opinion the Louisiana Fourth Circuit merely (and properly) stated well-established and oft iterated principles and analyses crafted by this Honorable Court in considering First Amendment retaliation claims. Far from forever muting powerful crusaders for public safety, the Opinion merely stands for the proposition that not all complaints by

---

[1] Petitioner nominally seeks issuance of a Writ to the Louisiana Supreme Court. However, that Court, in its discretion, unanimously declined to review the Fourth Circuit's Opinion and later denied rehearing; accordingly, the Writ would properly be directed to the Louisiana Fourth Circuit Court of Appeal. *See* 28 U.S.C. §1257(a); *e.g., Minneapolis, St. P. & S.S.M Ry. Co. v. Rock*, 279 U.S. 410, 412, 49 S.Ct. 363, 364 (1929).

a public employee necessarily constitute protected speech. The Opinion does not deviate from, and is wholly consistent with, precedents from this Court addressing First Amendment concerns in the public employment context. *See, e.g., Connick v. Myers*, 461 U.S. 138, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983); *Waters v. Churchill*, 511 U.S. 661, 114 S.Ct. 1878, 128 L.Ed.2d 686 (1994); *Mount Healthy City School Dist. v. Doyle*, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1997). Indeed, it is Petitioner's position, that all public employee criticism is protected speech, that runs directly contrary to this Court's jurisprudence.

Ultimately, this case is a prime example of this Court's caution in *Connick*:

> To presume that all matters which transpire within a government office are public concern would mean that virtually every remark – and certainly every criticism directed at a public official – would plant the seed of a constitutional case. While as a matter of good judgment, public officials should be receptive to constructive criticism offered by their employees, the First Amendment does not require a public office to be run as a round table for employee complaints or internal office affairs.

Connick, 461 U.S. at 149. The Court of Appeals Opinion breaks no new ground and is not inconsistent in any way with the constitutional analyses crafted by this Court. In fact, perusal of Petitioner's Petition to this Court makes it clear that he complains not of the tests applied by the Louisiana Fourth Circuit Court of Appeal; rather that, in his mind, the outcome should have been different. Monts thinks that the matters he spoke about were important safety

BEST AVAILABLE COPY

issues; Respondents disagree, and after extensive fact discovery Monts failed to put forth sufficient evidence to convince either the Trial Court or the Appeal Court that his characterization of the communications at issue was the correct one. Mere disagreement with the outcome of a lawsuit, even if the result rendered was incorrect (which Respondents deny in this case), is insufficient grounds for certiorari to issue. *E.g., Ross v. Moffitt*, 417 U.S. 600, 615-16, 94 S.Ct. 2437, 2446, 41 L.Ed.2d 341 (1974). Plainly, there is nothing in the Petition to warrant review by this Honorable Court, and Respondents respectfully urge the Court to deny the Petition for Writ of Certiorari.

II. The Facts Adduced in the District Court and Found by the Court of Appeal do not Support Petitioner's Contention.

David Monts was an "at-will" employee of the University of New Orleans, meaning that he could be terminated at any time with or without cause. *E.g., Mix v. University of New Orleans,* 609 So.2d 958, 964 (La. App. 4 Cir. 1992). As the Trial Court explicitly recognized, he was discharged from his employment with the University effective August 15, 1996, because of his continued disruption of departmental meetings and his negative attitude with regard to his employment with the University, including, but not limited to, his copying and distributing the salaries of other employees. *See, e.g.*, Trial Court's Reasons for Judgment ("Reasons") at 2-4, Pet.App. at A-13-14-A-16. ("Plaintiff presented no evidence that his employment with the University was not at-will nor did he show that he was discharged for any reason other than his failure to timely complete his work assignments and his disruptive behavior within the Physical Plant Department."); *e.g., Monts v. Bd. of Sup'rs of La. State*

Univ., 812 So.2d 787, 790 (La. App. 4 Cir. 2002), Pet.App. at A-8.

Petitioner, however, maintains that his termination resulted from his complaining to his supervisors and the University's outside legal counsel about purported mal- or misfeaseance in the Physical Plant Department. There is absolutely no credible evidence to support this suggestion. *E.g.*, Reasons at 4, Pet.App. at A-16. Furthermore, beyond Monts's own self-serving commentary, there is nothing in the record to support Petitioner's claims of unauthorized practice of engineering endangering the safety of the public, nor that violations of building codes even existed, much less that violations were uncorrected.

Moreover, while there may be passing reference to them in some papers filed in this case, Petitioner *never* pursued his specious, if not libelous, claims of failure to comply with State hiring and bid laws. Petitioner did no discovery *whatsoever* directed to these allegations, and *did not even mention* the possibility of these purported violations of law during the depositions of the now accused individuals. In fact, Petitioner himself *admits* that he has no evidence for any such claims, yet he trundles them out in his Petition to this Court in a transparent attempt to attach exaggerated significance to his workplace complaints. *See* Pet. at 3-4 (noting that Monts has no evidence to support any claims of violation of State bid and hiring laws.).

Finally, each deponent who had anything to do with Monts's separation from the University *unequivocally* testified that the termination had nothing whatsoever to do with plaintiff's alleged "whistle-blowing." Ultimately, the District Court *twice* ruled that Monts has no credible evidence whatsoever to show that he was discharged for any reason other than his failure to timely complete his work assignments and his disruptive behavior within the Physical Plant Department. A panel of the Louisiana Fourth Circuit

Court of Appeal affirmed in an unanimous opinion, and the Louisiana Supreme Court denied Monts's Application for a Writ of Certiorari to that Court (and a subsequent request for rehearing) by a 7-0 vote. Respondents respectfully suggest that the lower courts were correct in their rulings and Petitioner's Petition to this Honorable Court should be denied.

III. Petitioner's Characterizations Of The Opinion Of The Fourth Circuit Court of Appeal Are Misleading.

Even a cursory review of the Opinion of the Fourth Circuit Court of Appeal in this case establishes that Monts's rantings in his Petition are not mere mischaracterizations of that Court's rulings, but are affirmatively misleading, obviously designed to completely reformulate the Fourth Circuit's Opinion in an attempt to fabricate some issue for this Court's review.

A. The Appellate Court Did Not Rule That the Internal Nature of Monts's Communication Rendered it Unprotectable *Per Se.*

For example, in suggesting that the Fourth Circuit's Opinion warrants further review, Monts cites as a consideration that the Opinion purportedly conflicts with jurisprudence from this Honorable Court. Pet. at 11. Specifically, Monts suggests that the Fourth Circuit's finding that, "Monts' internal complaints were not primarily matters of public concern, and thus, not protected speech" somehow translates to a ruling that, by their very nature, internal complaints are not matters of public concern and, therefore, cannot be protected speech. *See, id.* While that formulation indeed contravenes the teachings of *Givhan v. Western Line Consol. School District,* 439 U.S. 410, 99

S.Ct. 693, 58 L.Ed.2d 619 (1979), the Fourth Circuit Opinion sets forth no such *per se* rule. In its Opinion the Fourth Circuit *nowhere even suggests* that the private or "internal" nature of the speech *per se* precludes First Amendment protection. Rather, the Court merely recognized that the nature of the speech is a factor to be considered in evaluating whether the communication at issue is in fact protected speech. *Monts,* 812 So.2d at 790-91, Pet.App. at A-7-A-9. It is, of course, well established that the public or private nature of the subject speech is an element to be addressed in the First Amendment retaliation context. *E.g., Teague v. City of Flower Mound, Texas,* 179 F.3d 377, 383 (5th Cir. 1999).

In fact, in its analysis the Fourth Circuit borrowed verbatim from the United States Fifth Circuit in describing the elements of a First Amendment retaliation claim. *Monts*, 812 So.2d at 790, Pet.App. at A-6-A-7. In quoting *Coughlin v. Lee*, 946 F.2d 1152 (5th Cir. 1991)(which itself relied in large part on United States Supreme Court jurisprudence), the Court explained all the elements of a First Amendment retaliation claim, including the Fifth Circuit's recognition that to be protected the speech at issue must address matters of public concern, which "must be determined by the content, form, and context of the given statement, as revealed by the whole record." *Id., quoting, Coughlin,* 946 F.2d at 1156 (omitting citations). Thereafter, the Court of Appeal discussed the four areas of alleged protected speech identified by Monts and found, correctly: "The four instances of allegedly 'protected' speech that Monts cites signify his dissatisfaction in his workplace, and are not matters sufficiently infused with public interest to support his first amendment retaliation claim." *Monts,* 812 So.2d at 791, Pet.App. at A-8. Only after its analysis of content does the Court proceed under the *Coughlin* analysis to discuss the "context and form" of

Monts's expression, and then finding only that the internal nature of the speech "militate(s) against" a finding of protected speech. *Id.* It is disingenuous at best to suggest, as Monts does, that the Court considered only the form and context of the allegedly protected speech and established a *per se* rule that internal complaints cannot be protected.

B. The Appellate Court Did Not Rule That Reports of Building and Safety Code Violations are *Per Se* Unprotected Speech.

In his Petition, Monts incorrectly suggests that the Fourth Circuit concluded, also as a *per se* rule, that reports of information involving fire and safety code violations, the unauthorized practice of engineering and other allegedly unlawful acts, "are not matters sufficiently infused with public interest to support [a] First Amendment retaliation claim." Pet. at 11.

The Court of Appeal made no such finding. The Court actually held:

> In the instant case, review of the alleged code violations with which Monts was concerned—if they were code violations at all—cannot be said to be major matters of public safety. Monts complained of wire size, plumbing and leveling issues and the like. It would not appear that, even if they were present, these seemingly minor deviations from the purest building practices suggest a great threat to public health and safety. The four instances of allegedly "protected speech" that Monts cites signifies his dissatisfaction in his workplace and are not matters sufficiently infused with public

> interest to support his first amendment retaliation claim.

812 So.2d at 791; Pet.App. at A-8. It is simply wrong to suggest, and totally misleading to imply, that the Fourth Circuit ruled that *all* violations of safety or building codes are not matters of public concern. Plainly, the Court merely held that Monts's complaints did not concern matters which genuinely posed an apparent threat to public safety and welfare. It is obvious that not all minor deviations from technical code requirements will pose public safety issues. Notably, even if Monts's comments actually did address matters of public concern, it is well established that:

> [S]peaking up on a topic that may be deemed one of public importance does not automatically mean that the employee's statements address a matter of public concern as that term is employed *Connick [v. Myers*, 461 U.S. 138 (1983).]

Kokkins v. Ivkovich, 185 F.3d 840, 844 (7th Cir. 1999); *see, e.g., Pappas v. Guiliani*, 290 F.3d 143, 152 (2nd Cir. 2002)(concurring opinion)(collecting cases).

Accordingly, Monts's Petition rests largely on two rulings **the appellate court did not make**. The Court did **not** find that the internal or private nature of the speech precludes First Amendment protection, and the Court did **not** rule that violations of safety codes are not matters of public concern. Monts's attempts to mislead this Court should be rejected out of hand, as should his Petition for a Writ of Certiorari.

IV. The Fourth Circuit Correctly Found Monts's Speech Was Not A Matter Of Public Concern.

Monts's frenetic diatribe, despite its length and hyperbole, utterly ignores basic factual and legal elements of this case. For example, not once does Monts

acknowledge that he was an at-will employee who could be discharged at any time, with or without cause. *E.g.*, *Waters*, 511 U.S. at 679; *Mix*, 609 So.2d at 965. Monts also ignores that *there is no actual evidence of code violations in the record.* Specifically, the other members of the Physical Plant Services Department (including an architect and engineers), testified *unequivocally* that they knew of no violations of safety or building codes and that, if they had knowledge of them, any violations would have been corrected.

Importantly too, Monts does not recognize that it is simply not the case that violations of each and every building code provision, or, in the words of the Fourth Circuit, "minor deviations from . . . purest building practices," are matters of sufficient public interest to implicate First Amendment protection, and pointing out such "minor deviations" from code provisions is simply not protected speech. An employee does not have a constitutional right to inform superiors of the requirements of law. *E.g.*, *Chesser v. Sparks*, 248 F.3d 1117, 1123-24 (11th Cir. 2001).

Respondents do not dispute that serious matters of public health and safety are, indeed, matters of public concern, and there is nothing in the Fourth Circuit's Opinion which suggests to the contrary. As noted by the Court, however:

> [R]eview of the alleged code violations with which Monts was concerned—if they were code violations at all—cannot be said to be major matters of public safety. Monts complained of wire size, plumbing and leveling issues and the like. It would not appear that, even if they were present, these seemingly minor deviations from purest

> building practices suggest great threat to the public health and safety.

812 So.2d at 791, Pet.App. at A-8.

Additionally, as Monts himself stresses, reporting what he may have perceived as code violations was part of his job. *See* Pet. at 22. As such, Monts's comments about these building codes are definitionally not protected speech. As the court recognized in *Nero v. Hospital Authority of Wilkes County*, 86 F.Supp.2d 1214 (S.D. Ga. 1998): "When an employee communicates matters in the 'normal course of his duties' those matters are communicated as an employee and are not protected speech." 86 F.Supp.2d at 1225, *aff'd w/o op.*, 202 F.3d 288 (11th Cir. 1999), *quoting, Morris v. Crow*, 142 F.3d 1379, 1382 (11th Cir. 1998); *see, e.g., Mishk v. Destafano*, 5 F.Supp.2d 194, 201 (S.D.N.Y. 1998).

In any event, it is plain, as the Appeal Court found, that Monts's complaints and criticism were primarily focused on conditions of his employment. This is apparent from, *inter alia*, the instances of allegedly "protected speech" cited by Monts himself and discussed by the Court in its Opinion. As the Court held, all of these instances "signify Monts's dissatisfaction in his workplace, and are not matters sufficiently infused with the public interest to support his First Amendment retaliation claim." *Monts,* 812 So.2d at 791, Pet.App. at A-8.

For example: he complained of (1) having his conclusions and ideas "overrule[d] or ignore[d]"—essentially a complaint that he did not get along with supervisors; (2) he photocopied and disseminated information concerning his co-workers salaries and bonuses—clearly a complaint about low salaries, an aspect of his employment and not a matter of public concern; (3) he complained that Respondent Cantrell advanced certain

University projects before others because those projects were of "special interest" to senior University officials;[2] (4) other complaints about "abusive and harassing conduct"—surely complaints about his work conditions and not matters of interest to the general public; and, (5) he reported to UNO's attorneys with concerns about code violations—which is an irrelevancy in this context because there is no showing that any of the defendants knew anything about these consultations prior to Mr. Monts's termination.[3] These matters concern nothing more than the policies, practices and procedures of the Physical Plant Department. Analogously, one court has held:

> While it is undoubtedly true that the general public has an interest in having quality fire protection, it is also true that a general public has an interest, at least theoretically, in good government in all of its aspects, and an internal controversy over firefighting policy and procedures within a fire department cannot be protected speech any more than a surly, insubordinate remark by a police chief to a mayor can receive First Amendment protection.

---

[2] Notably, there is no suggestion that any of these supposed "projects of special interest" were for the personal benefit of senior University officials—rather the most that can be inferred is that certain campus building projects were given a different priority than that which Mr. Monts would have ascribed to them.

[3] *See* Reasons at p. 5, Pet.App. at A-18. ("[T]here was no evidence whatsoever that the University attorneys reported Monts's visits to anyone at the University who had the authority to hire and fire an employee. . .").

Vincent v. City of Talladega, 980 F.Supp. 410, 412 (N.D. Ala. 1997). Borrowing from the United States Fifth Circuit:

> The conclusion is inescapable: [Monts] was not terminated for speaking "as a citizen upon matters of public concern." *Connick*, 103 S.Ct. at 1690, or for "speak(ing) out as a citizen on a matter of general concern, *not tied to a personal employment dispute*," *id.* at 1691 n.8 (emphasis added).

Terrell v. University of Texas System Police, 792 F.2d 1360, 1363 (5th Cir. 1986).

Additionally, as recognized by the Fourth Circuit as *part* of its analysis, the context and form of Monts's expression supported the finding that he was not addressing matters of public concern as a citizen, but was acting as a disgruntled employee. With the exception of the discounted communication with counsel, all of Monts's complaints, either verbal or in memoranda, were internal to the Physical Plant Services Department. He did not complain to other University officials and he did not report his suggestions of wrongdoing to the State Board of Ethics which, as is explained in the Staff Handbook, he had the full right to do.[4] As the Fourth Circuit held only after considering the content, form and context of Monts's statements: "Accordingly, it is apparent that Monts's internal complaints were not primarily matters of public concern, and thus, not protected speech." *Monts,* 812 So.2d at 791, Pet.App. at A-8. This finding is fully consistent with those

---

[4] Monts did file complaints with the State Board of Ethics long after this lawsuit was filed. His complaints were summarily dismissed.

cases where the public or private nature of the speech is at issue. For example, in *Teague v. City of Flower Mound, Texas*, 179 F.3d 377 (5th Cir. 1999), the court observed:

> In terms of context, however, [plaintiff's] grievance is more appropriately characterized as private: It was made in the setting of a private employee-employer dispute. Although "[t]he fact that the Plaintiffs chose to file internal grievances rather than publicizing their complaints is not dispositive," *Benningfield [v. City of Houston,* 157 F.3d 369, 375 (5th Cir. 1998)], this evidence does most certainly suggest that the speech was private in context, rather than public.

179 F.3d at p. 383 (footnote omitted).

As the United States Court of Appeals for the Sixth Circuit noted in considering retaliation claims in a context similar to the one at Bar:

> While [plaintiff] may have been justified in his beliefs that his action of the Business Enterprises Program did not receive enough of the operating budget, that the Program should have had a 24-hour repair deadline before he instituted one and that the wisdom and propriety of some of the Program's purchasing practices was questionable, he presented no evidence linking of these charges to corruption in the Bureau or in the Program. Consequently, instead of having addressed a matter of public concern, [plaintiff's] complaints appeared to be

> nothing more than examples "of the quintessential employee beef: management has acted incompetently." *Murray [v. Gardner*, 741 F.2d 434, 438 (D.C. Cir. 1984).]

Barns v. McDowell, 848 F.2d 725, 734-35 (6th Cir. 1988). Similarly, Monts complained about the University's, specifically the Physical Plant Services Department's, allocation of financial and personnel resources and disagreed with co-workers about how certain projects should be accomplished. Notwithstanding what he may genuinely, if erroneously, believe as raising real issues of public welfare and concern, the trial court twice and the appellate court unanimously, on the record before them, essentially found that at best Monts's complaints amounted to no more than "the quintessential employee beef."

Examination of the cases Monts cites in support of his "public concern" argument merely highlight that his complaints did not rise to the level warranting First Amendment protection. For instance, Monts cites to the case of *Conaway v. Smith*, 853 F.2d 789 (10th Cir. 1988). Pet. at 20. In *Conaway,* the plaintiff reported "several electrical violations which were dangerously exposed to the public." 853 F.2d at 791. In addition, however, he had accused his superiors of requesting him to "perform on city time for city officials and their friends and relatives, often without the required permits and license." 853 F.2d at 795. He also complained of being pressured to work on political campaigns, which has clearly been recognized as a matter of public concern. *Id.* at n. 6 (*citing, Connick v. Myers*, 461 U.S. 138, 149 (1983)). In addition, the *Conaway* plaintiff reported activities which might have indicated illegal payoffs or kickbacks, and he refused to issue favorable building inspection reports in exchange for money. *Id.* at n.

7. In contrast, Monts's insignificant disagreements with the internal operations of the Physical Plant Department did not approach the level of importance or concern recognized as protected speech in *Conaway*.

Other cases relied upon by Monts are likewise inapposite. For example, in *Feldman v. Philadelphia Housing Authority*, 43 F.3d 823 (3rd Cir. 1994), the plaintiff had been retaliated against for, among other things, reporting on investigations of an illegal bid-rigging scheme and the improper promotion of fellow employees implicated in that violation of law. *See* 43 F.3d at 827. In *Thompson v. City of Starkville*, 901 F.2d 456 (5th Cir. 1990), the plaintiff-police officer was allegedly discharged for reporting adultery by other police officers taking place while the officers were on duty and that police officers were committing burglaries, as well as unjust promotions within the department. *See* 901 F.2d at 457-58. In *Brown v. Texas A&M University*, 804 F.2d 327 (5th Cir. 1986), plaintiff had been retaliated against for exposing self-dealing by a university official—a clear case of misconduct and betrayal of public trust.

As the foregoing sampling of cases cited to by Monts shows, in each case the complained of conduct was sufficiently unethical or illegal to allow protestations concerning that conduct to rise to the level of protected activity. In this case, Monts's complaints involved nothing more than disagreements, if strong ones, with his co-workers and supervisors about how to properly complete University building and maintenance projects. Nothing alleged by Monts in this case comes close to the undeniably serious, unethical or illegal practices present in the cases he relies upon.

V. The Fourth Circuit Properly Affirmed The Trial Court's Granting Of Summary Judgment.

In addition, it is grossly misleading to ignore, as Petitioner attempts to do, that this case was decided by summary judgment and not, for example, pursuant to La. Code Civ. P. art. 927, the Louisiana procedural equivalent of a motion to dismiss under Rule 12, Fed. R. Civ. P. Petitioner was provided with ample opportunity to make out his case that his complaints touched on matters of genuine public concern, and as a matter of fact and law, he failed. The District Court twice considered the evidence before it, and twice rejected Petitioner's contentions – on the record before it the Louisiana Fourth Circuit Court of Appeal saw nothing to disturb in the District Court's rulings, and the Louisiana Supreme Court unanimously declined to accept the case for review. That Petitioner disagrees, no matter how sincerely, with those findings does not alter the record considered below, nor does it qualify this case for further appellate consideration. *E.g., Ross,* 417 U.S. at 615-16.

Much like Rule 56, Fed. R. Civ. P., pursuant to Article 966 of the Louisiana Code of Civil Procedure in moving for summary judgment a movant first must "point out to the court that there is an absence of factual support for one or more elements essential to plaintiff's claim." *Brown v. Manhattan Life Ins. Co.*, 791 So.2d 74, 77 (La. 2001). Then, the burden shifts to the plaintiff to produce factual support sufficient to establish that he would be able to satisfy his evidentiary burden of proof at trial. 791 So.2d at 78. Finally, "a fact is material for purposes of summary judgment if its existence or non-existence is essential to the plaintiff's cause of action under the applicable theory of recovery." *Id.* Respondents respectfully submit that they made a sufficient showing in the courts below of the utter lack of factual support for all elements essential to plaintiff's First Amendment claims, including the requirement that the

speech at issue address matters of genuine public concern rather then complaints and criticisms by the employee *qua* employee.

In his Petition, Monts yet again argues the facts, disagreeing with the Courts. *See, e.g.,* Pet. at 13-14. This ignores that whether the speech was a matter of public concern, and therefore entitled to First Amendment protection in the first place, is a question of law for the court. *Connick,* 461 U.S. at 148 n.7; *Coughlin*, 946 F.2d at 1152. Moreover, Monts continually fails to recognize that as a matter of fact both Courts considering the case found there was no credible evidence adduced below in support of his claims. A motion for summary judgment is properly granted when a party fails to produce factual support sufficient to establish that he would be able to satisfy his evidentiary burden of proof at trial. *See, e.g., Brown,* 791 So.2d at 78; *see, generally, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Celotex Corp. v. Catrett,* 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).[5]

---

[5] In this regard, Monts's statement that "no trier of fact has yet decided the issue of motive or the ancillary issue of pretext" is simply wrong. *See* Pet. at 16. In point of fact, the District Court clearly found:

> In this case the substantially motivating factor in plaintiff's discharge was his disruptive behavior, negative attitude and devise actions in disseminating information concerning the salaries of co-employees and his superiors. The Court found that although the First Amendment may have protected plaintiff's speech, his actions clearly justified his termination.

Pet.App. at A-20.

Petitioner put forth nothing but hearsay, innuendo and supposition to support his case. There is nothing left to defend against motion for summary judgment when fact is met with mere chimera. In this respect, Petitioner's listing of purported "facts" which support his claims (Pet. at 4-5), is pointless, as it has been established that he offered insufficient proof to support a finding that these listed statements were actual facts and that, even if they were, their existence would have been sufficient to avoid summary judgment.

With no real evidence to support his claims, in the courts below, and again in this forum, Monts relies upon self-serving, irrelevant and inadmissible affidavits, three of which, those of Monts himself, a Mr. Anderson and a Mr. Ehlers, are included in the Appendix to the Petition. Pet. at 4; Pet.App. at A-84-A-93. These affidavits, however, are purely self-serving, are not based upon personal knowledge and/or contain the rankest sort of hearsay. They do not, therefore, have any evidentiary value.

Messrs. Ehlers and Anderson, ex-UNO employees, were one-time co-workers with Mr. Monts. Their affidavits, however, are worthless. For one thing, they are replete with inadmissible hearsay. For example, Ehlers states at ¶ 27 of his affidavit:

> . . .Once Ms. Carbonette said to me, 'I put your work order at the bottom.' My understanding was that Ms. Carbonette did this and said this because she was angry at Mr. Parnon and therefore wished the untimely completion of work orders submitted by Mr. Parnon's staff to reflect poorly on Mr. Parnon and his staff. . .

Pet.App. at A-88.

Even if this were relevant, Mr. Ehlers is simply not competent to testify as to what Ms. Carbonette may have said, nor does his opinion as to why Ms. Carbonette said something or what she wished for have any evidentiary value whatsoever. Later, the affidavit states:

> . . .Mr. Monts then told this to Mr. Parnon at a departmental meeting with me and other staff members present, and although Mr. Parnon did not appear happy about it, he okayed Mr. Monts's decision. Afterwards Mr. Parnon told me, 'I wish I had the balls to do that.' Later on, I overheard Mr. Schambach angrily telling someone on the telephone, 'Dave went to see an attorney!'

Ehlers Aff. at ¶ 31 (Pet.App. at A-88-A-89). Clearly, (and again, even if it were relevant) testimony by Mr. Ehlers about what others may have said, including what he may or may not have overheard from one end of a telephone conversation, cannot be considered credible evidence.

Additionally, the affidavits contain mere statements of personal opinion which are wholly irrelevant to any issues at bar, and specifically do not supply any proof that Mr. Monts was terminated in retaliation for exercising his First Amendment rights. For instance, in his affidavit Ehlers states:

> In or about November 1994, I wore a vest to work one day. At that time, Mr. Cantrell told me we had to go out into the parking lot. Once in the parking lot, Mr. Cantrell said, 'I have a problem with you. You're wearing a vest. I fired a guy for wearing a vest.' *At that point, I became convinced that*

> *Mr. Cantrell was severely mentally unbalanced.*

Ehlers Aff. at ¶ 28 (emphasis added) (Pet.App. at A-88). Needless to say, this statement is not only insulting, but also wholly inadmissible and completely irrelevant.

Finally, lest there remain a scintilla of concern that something in these expressions of personal feelings suggested the existence of an issue of fact—which Respondents vehemently deny—it should be noted that even accepting the expressions in the affidavits as true does not help Monts in the slightest. Simply, there is no disagreement that Monts was an at-will employee, subject to discharge with or without cause. *See* La. Civ. Code art. 2747.

> An "at will" employee is free to quit at any time without liability to his or her employer and may be terminated at any time provided the termination does not violate any statutory or constitutional provision . . . Beyond that, the reasons for termination need not be accurate, fair or reasonable . . . In fact, there need be no reason at all for termination.

Bell v. Touro Infirmary, Inc., 785 So.2d 926, 928 (La. App. 4 Cir. 2001). As the courts below recognized, Monts made no showing of any statutory or constitutional transgressions; accordingly, he was subject to dismissal at any time, for any reason. The submitted affidavits, therefore, are mere irrelevancies.

It is apparent that Mr. Monts is passionate in his belief that there was some nefarious motivation behind his

discharge. However, no amount of fervor can turn innuendo into fact or hearsay into proof.

Similarly, Petitioner's wholesale mischaracterizations of the Fourth Circuit's Opinion should not mislead this Honorable Court into thinking that the Court of Appeal stumbled into committing constitutional error. Contrary to the statements in Monts's Petition, the Court did not rule that internal communications cannot be subject to First Amendment protection, nor did that Court rule that violations of safety or building codes are *per se* not matters of public interest. The Court held only that Monts's complaints did not, in fact, implicate serious health and safety issues and were not, therefore, matters of public concern. Monts's strident protestations to the contrary have properly been overruled and no extent of misdescription of the Fourth Circuit's Opinion can support further appellate review of this case.

Mr. Monts was an "at will" employee of the University, subject to dismissal at any time consistent with the school's policies as delineated in the Staff Handbook. He became thoroughly disenchanted with his job and, as all the credible evidence proved, became a disruptive and divisive element impeding the efficient functioning of the Physical Plant Services Department. Therefore, he was terminated in accordance with University procedures. After some four years of discovery, the most that Petitioner is able to offer in support of his contention that he was terminated for exercising his First Amendment right of free speech are his own beliefs and suspicions supported only most tenuously by coincidence and inadmissible and irrelevant hearsay. The district court recognized that Petitioner would not be able to establish the central elements of his claim, and *twice* granted Respondents summary judgment. A panel of the Louisiana Fourth Circuit Court of Appeal agreed, and the Louisiana Supreme Court denied

Petitioner's Application for a Writ of Certiorari and his request for rehearing, both by a vote of 7-0. The rulings and opinions of the courts below are correct, are fully supported by the record and should not be disturbed.

Monts's Petition to this Court reflects only his illimitable capacity for self-delusion and concomitant hubristic self view. Shorn of its hysterical ravings and invocations of the spectre of constitutional doom, Mr. Monts's Petition suggests nothing whatsoever that warrants further appellate review. Ultimately, he disagrees not with the analyses of the Courts below, but only with their ultimate findings.

VI. Conclusion.

For the foregoing reasons, Respondents, Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, d/b/a University of New Orleans, Patrick M. Gibbs, Frank A. Schambach and Gustave S. Cantrell, respectfully submit that Petitioner David A. Monts's Petition for a Writ of Certiorari should be denied.

Respectfully submitted:

Alexander M. Mcintyre, Jr. (17053)
Counsel of Record
Phyllis Guin Cancienne (19605)
LOCKE LIDDELL & SAPP, LLP
(A Professional Law Corporation)
Pan American Life Center
601 Poydras Street - Suite 2400
New Orleans, LA 70130
Telephone: (504) 558-5100

Barbara L. Bossetta (#20125)
Department of Justice

Attorney General's Office
601 Poydras Street, Suite 1725
New Orleans, LA 70130
Telephone: (504) 599-1200

Attorneys for Respondents

Supreme Court, U.S.
FILED
OCT 24 2002
OFFICE OF THE CLERK

No. 02-329

(4)

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID A. MONTS,
Petitioner

vs.

BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AGRICULTURAL AND MECHANICAL COLLEGE D/B/A UNIVERSITY OF NEW ORLEANS, PATRICK M. GIBBS, FRANK H. SCHAMBACH, AND GUSTAVE S. CANTRELL,
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

PETITIONER'S REPLY BRIEF

Jack E. Morris
Counsel of Record
Attorney at Law
4051 Veterans Boulevard
Suite 208
Metairie, Louisiana 70002
Telephone: (504) 454-2769
Facsimile: (504) 454-3855

Counsel for Petitioner

14 pp

TABLE OF CONTENTS

Page

Table of Authorities ii

Introduction 1

1. Petitioner's Position 1

2. Fire and Safety Code Violations 1

3. Internal and Private Speech 4

4. Summary Judgment 6

5. Employment at Will 8

Conclusion 9

TABLE OF AUTHORITIES

Page

Constitutional Provisions

U.S. Const. Amend. I 1, 2, 3, 4, 5, 7, 8, 9, 10

U.S. Const. Amend. XIV 9

Statutes

La. R.S. 40:1721 *et seq.*, Louisiana Building Code for State Owned Buildings Law 2, 3

La. R.S. 37:681 *et seq.*, Louisiana Registration Law for Professional Engineers and Land Surveyors 2, 3

LAC 46:2101 *et seq.*, Rules of Professional Conduct for Professional Engineers and Land Surveyors 2

Cases

Connick v. Myers, 461 U.S. 138, 150, 103 S.Ct. 1684, 75 L.Ed.2d 708, 722 (1983) 5, 6, 9

Givhan v. Western Line Consolidated School District, 439 U.S. 410, 414, 99 S.Ct. 693, 58 L.Ed.2d 619 (1979) 5, 10

Mt. Healthy City Bd. of Ed. v. Doyle, 429 U.S. 274, 283, 97 S.Ct. 568, 50 L.Ed.2d 471, 481 (1977) 8

Munafo v. Metropolitan Transportation Authority, 285 F.3d 201 (2d Cir. 2002) 2, 6

Pickering v. Board of Education, 391 U.S. 563, 20 L.Ed. 2d 811, 88 S.Ct. 1731 (1968) 5

Porter v. Califano, 592 F.2d 770, 778 (5th Cir. 1979) 7

Rankin v. McPherson, 483 U.S. 378, 386 n.11, 107 S.Ct. 2891, 107 L.Ed.2d 2891 (1987) 5, 10

MAY IT PLEASE THE COURT:

Petitioner Monts, through undersigned counsel, respectfully submits this reply brief in support of his petition for certiorari and in response to the opposition filed by respondents the Board of Supervisors d/b/a UNO, Gibbs, Schambach, and Cantrell.

1. Petitioner's Position

In their opposition, respondents state: "it is Petitioner's position, that all public employee criticism is protected speech, that runs directly contrary to this Court's jurisprudence" (Oppos., p. 2). If that were Monts's position, respondents' statement would be correct. But "that all public employee criticism is protected speech" is not Monts's position. Rather, Monts's position is that his reports to respondents and their attorneys of information involving fire and safety code violations, the unauthorized practice of engineering, and other improper and illegal acts on the UNO campus addressed matters of public concern within the ambit of First Amendment protection. That is the position the Louisiana court of appeal rejected when it held that, as a matter of law, Monts's communications were "not matters sufficiently infused with public interest to support his First Amendment retaliation claim" and "were not primarily matters of public concern, and thus, not protected speech" (Append. B, p. A-8). Hence, the question presented to this Court is not, as respondents fancy, whether "all public employee criticism is protected speech," but whether Monts's communications were protected speech.

2. Fire and Safety Code Violations

Respondents accuse Monts of suggesting or implying "that the Fourth Circuit ruled that *all* violations of safety or building codes are not matters of public concern" (Oppos., p. 8) (emphasis in original). But again, Monts does not say that. Monts simply points out that the Louisiana court of appeal, in

its analysis of the *content* of Monts's communications, held that the specific code violations Monts reported "cannot be said to be major matters of public safety" and "are not matters sufficiently infused with public interest to support his First Amendment retaliation claim" (Append. B, p. A-8). If Monts's reference to the state court's own words suggests or implies anything, it is that the state court's decision that *any* violations of safety or building codes are not matters of public concern is constitutionally flawed.

The Louisiana Legislature enacted the *Louisiana Building Code for State Owned Buildings Law*, La. R.S. 40:1721 *et seq.*, adopting the Life Safety Code, the National Electric Code, and other codes "to insure the public health and safety . . . in the new construction, alterations, additions for renovations of state buildings." La. R.S. 40:1721 (Append. E, p. A-23). Furthermore, the Legislature recognizes the important role professional engineers play in the enforcement of such codes insofar as the law regulates the practice of engineering "[i]n order to safeguard life, health, and property, and to promote the public welfare . . . ." La. R.S. 37:681 (Append. E, p. A-24); directs professional engineers to "at all times recognize that their primary obligation is to protect the safety, health, property, and welfare of the public," LAC 46:2103](B) (Append. E, p. A-27); requires professional engineers to exercise "responsible charge" over engineering design decisions, La. R.S. 37:682(12) (Append. E, p. A-25); and requires professional engineers to report "any observed conditions which endanger public safety and health," LAC 46:2103(B) (Append. E, p. A-27).

In view of these express declarations of public purpose, it follows as a matter of law that a professional engineer's reports of *any* violations of the Louisiana Building Code for State Owned Buildings address matters of public concern within the ambit of First Amendment protection. As the Second Circuit pointed out in an analogous context in *Munafo v. Metropolitan Transportation Authority*, 285 F.3d 201 (2d Cir.

2002): "If one needed to consult more than common sense, one would need look no farther than the existence of the Occupational Safety and Health Act of 1970 . . . and similar state laws . . . to recognize that safety in the workplace is a matter of public concern" (citations omitted). Here, in finding that the specific code violations Monts reported "cannot be said to be major matters of public safety" and "are not matters sufficiently infused with public interest to support his First Amendment retaliation claim" (Append. B, p. A-8), the Louisiana court of appeal not only failed to consult common sense but also failed to credit the Louisiana legislature's express purpose in enacting the Louisiana Building Code for State Owned Buildings "to insure the public health and safety," La. R.S. 40:1721, and in enacting the Louisiana Registration Law for Professional Engineers and Land Surveyors "to safeguard life, health, and property, and to promote the public welfare," La. R.S. 37:681.

Moreover, contrary to respondents' contention that "there is no actual evidence of code violations in the record" (Oppos., p. 9), Monts--whose credentials as a Professional Electrical and Nuclear Engineer are undisputed (Append. F, p. A-28)--has meticulously specified objectively observable facts which he in his expertise reasonably believed constituted violations of the Life Safety Code and National Electric Code on the UNO campus and which he conscientiously reported to UNO officials and UNO's attorneys (Append. F, p. A-31). On the other hand, the record contains absolutely no factual, technical, or legal support for respondents' and the Louisiana court of appeal's speculation that the alleged code violations were not "code violations at all" or were "seemingly minor deviations from the purest building practices" (Append. B., p. A-8). On the contrary, the affidavits of Monts (Append. F, p. A-28), John Ehlers, P.E. (Append. G, p. A-84), and Allan Anderson, P.E. (Append. H, p. A-90) all establish the existence of code violations and the unauthorized practice of engineering on the UNO campus. Even John Michael Parnon-

-Monts's supervisor who signed Monts's termination letter (Append. I, p. A-94)--admitted in his deposition:

> Q. Did Mr. Monts complain about what he perceived to be code violations or practicing engineering without a license by Gus [Cantrell] or Frank [Schambach]? Did he complain about such things at the weekly staff meetings that you had?
>
> A. It came up occasionally.

(Parnon Depo., p. 157).

In short, the Louisiana court of appeal's decision that Monts's reports of violations of safety or building codes did not address matters of public concern is, on its face, erroneous as a matter of constitutional law and contrary to public policy.

3. Internal and Private Speech

Respondents state that the Louisiana court of appeal "*nowhere even suggests* that the private or 'internal' nature of the speech *per se* precludes First Amendment protection" (Oppos., p. 6) (emphasis in original), and Monts agrees with that statement. Nevertheless, a plain reading of the state court's opinion reveals that in its analysis of the *context and form* of Monts's communications, the court relied *explicitly and exclusively* on its finding that the communications were "internal" (Append. B, p. A-8).

Nowhere in the Louisiana court of appeal's analysis of the *context* of Monts's communications does the court consider any factor other than its finding that the communications "were *internal* and more specifically, *internal* within the Physical Plant Services Department" (Append. B, p. A-8) (emphasis added). The court supports this finding by pointing out the negative: Monts "made no complaints to other UNO officials, nor did he report the purported

misconduct to the State Board of Ethics" (Append. B, p. A-8). Similarly, in its analysis of the *form* of Monts's communications, the court notes only that "all of Monts' complaints, *either verbal or in memoranda*, were *internal*" (Append. B., p. A-8) (emphasis added). The court of appeal thus concludes that the *internal form* ("verbal or in memoranda") and *internal context* ("within the Physical Plant Services Department") "of Monts' expression militate against the finding that he was addressing matters of public concern as a citizen, rather than as a disgruntled employee," and that therefore "Monts' internal complaints were not primarily matters of public concern, and thus, not protected speech" (Append. B., p. A-8).

So notwithstanding respondents' protestations, the Louisiana court of appeal *did* find that the internal and private context and form of Monts's speech precludes First Amendment protection. As such, the state court's decision conflicts with this Court's unanimous decision in *Givhan v. Western Line Consolidated School District*, 439 U.S. 410, 414, 99 S.Ct. 693, 58 L.Ed.2d 619 (1979), that a public employee does not forfeit "his protection against governmental abridgement of freedom of speech if he decides to express his views privately rather than publicly." See also *Rankin v. McPherson*, 483 U.S. 378, 386 n.11, 107 S.Ct. 2891, 107 L.Ed.2d 2891 (1987) ("The private nature of the statement does not . . . vitiate the status of the statement as addressing a matter of public concern").

Moreover, in concluding that the "internal" form and context of Monts's communications "militate against the finding that he was addressing matters of public concern as a citizen, rather than as a disgruntled employee" (Append. B., p. A-8), the Louisiana court of appeal completely misconstrues and misapplies the *Pickering/Connick* balancing test whereby the court "must arrive at a balance between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interests of the State, as an employer, in promoting the efficiency of the public services it performs

through its employees." *Connick v. Myers*, 461 U.S. 138, 150, 103 S.Ct. 1684, 75 L.Ed.2d 708, 722 (1983). For even as respondents have failed to produce a shred of evidence that anything Monts said or did impaired the efficiency of the services UNO performed through its employees, the state court of appeal ignores this Court's cautions in *Connick* that "the State's burden in justifying a particular discharge varies depending upon the nature of the employee's expression," and that "a stronger showing may be necessary if the employee's speech more substantially involved matters of public concern." *Id.* at 150, 154, 75 L.Ed.2d at 722, 724. Indeed, respondents' conclusory argument that "the context and form of Monts's expression supported the finding that he was not addressing matters of public concern as a citizen, but was acting as a disgruntled employee" (Oppos., p. 12) mirrors the defendants' argument in *Munafo*, 285 F.3d at 201, that Munafo's complaints of "trackworkers' being forced to operate in unlawful proximity to live rails without protective gear, welders' being forced to work without respirators, and drivers' being assigned vehicles with faulty brakes" "were no more than internal personal grievances relating to matters of his own personal interest," and the Court's response to that argument is equally applicable in this case: "Given the requirements that we accept the allegations of the complaint as true and take the record in the light most favorable to Munafo as the party against whom summary judgment is sought, *defendants' premise borders on the frivolous*" (emphasis added).

4. Summary Judgment

Knowing that this case was decided *on summary judgment*, respondents state that "Monts's statement that 'no trier of fact has yet decided the issue of motive or the ancillary issue of pretext' is simply wrong" (Oppos., p. 17 n.5). In support of their implication that the issues of motive and pretext were decided by a "trier of fact," respondents cite the

state trial court's finding *on summary judgment* that "the substantially motivating factor in plaintiff's discharge was his disruptive behavior, negative attitude and divisive actions in disseminating information concerning the salaries of co-employees and his superiors." However, even a cursory review of just the affidavits contained in the Appendix to Monts's Petition for Certiorari shows that the only way the trial court could have decided those issues and granted summary judgment on this record was to consider the merits, make credibility determinations, evaluate testimony, weigh the evidence, determine knowledge and motive, and draw all factual inferences and resolve all doubts in favor of respondents. Such errors are particularly egregious where First Amendment protections are at issue. As the Fifth Circuit stated in *Porter v. Califano*, 592 F.2d 770, 778 (5th Cir. 1979):

> As a general rule a court should use Rule 56 summary judgment most sparingly in a First Amendment case such as this involving delicate constitutional rights, complex fact situations, disputed testimony, and questionable credibilities. This is especially true where the only affidavits supporting the motion for summary judgment come from officials who are attempting to silence a subordinate who has accused them of corruption, where those affidavits are vague and conclusory, and where the administrative record largely shaped by the officials themselves contains clearly conflicting evidence. Courts must not allow Rule 56 and the interests of judicial economy to become a rubber stamp obscuring rights indelibly printed in the constitution.

Furthermore, the state court of appeal did not reach the issues of motive and pretext because it erroneously found that "Mr. Monts' internal complaints were not primarily matters of public concern, and thus, not protected speech," and that "we need not address any of the other issues presented by plaintiff, since without protected speech, there can be no violation of the First Amendment" (Append. B, p. A-8). The court of appeal therefore did not decide whether the record discloses the existence of genuine issues of material fact as to respondents' motive in terminating Monts, or whether the trial court thus erred in granting respondents' motion for summary judgment, each of which issues are ripe for decision on remand.

5. Employment at Will

As if Monts's employment-at-will status were relevant to his claim that respondents retaliated against him for exercising his right to free speech on matters of public concern, respondents complain that "not once does Monts acknowledge that he was an at-will employee who could be discharged at any time, with or without cause" (Oppos., p. 9). However, this Court has made it clear that "[e]ven though [an employee] could have been discharged for no reason whatever, and had no constitutional right to a hearing prior to the decision not to rehire him, he may nonetheless establish a claim to reinstatement if the decision not to rehire him was made by reason of his exercise of constitutionally protected First Amendment freedoms." *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U.S. 274, 283, 97 S.Ct. 568, 50 L.Ed.2d 471, 481 (1977).

So what do respondents hope to gain by complaining to this Court that "not once does Monts acknowledge that he was an at-will employee who could be discharged at any time, with or without cause" (Oppos., p. 9)? No doubt they hope to gain the same unfair advantage they seek (and have successfully obtained thus far in this litigation) in falsely stating that "Petitioner's position" is "that all public employee

criticism is protected speech" (Oppos., p. 2), in falsely accusing Monts of suggesting or implying "that the Fourth Circuit ruled that *all* violations of safety or building codes are not matters of public concern" (Oppos., p. 8) (emphasis in original), in falsely accusing Monts of suggesting that the state court of appeal held "that the private or 'internal' nature of the speech *per se* precludes First Amendment protection" (Oppos., p. 6) (emphasis in original), and in falsely implying that a "trier of fact" has decided the issues of motive and pretext (Oppos., p. 17 n.5), among numerous other falsehoods propagated throughout their opposition brief and indeed throughout this litigation. But by now, of course, respondents should have Zero (0) credibility in this Court.

Conclusion

This Court noted in *Connick*, 461 U.S. at 150 n.10, 75 L.Ed.2d at 722 n.10 (citations omitted):

> "The Constitution has imposed upon this Court final authority to determine the meaning and application of those words of that instrument which require interpretation to resolve judicial issues. With that responsibility, we are compelled to examine for ourselves the statements in issue and the circumstances under which they [are] made to see whether or not they . . . are of a character which the principals of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect." Because of this obligation, we cannot "avoid making an independent constitutional judgment on the facts of the case."

In this case, the Louisiana courts engaged in no such analysis. Rather, the Louisiana court of appeal, with the

Louisiana Supreme Court's blessing, summarily concluded that Monts's communications involving fire and safety code violations and the unauthorized practice of engineering and other improper acts and practices on the campus of a public university did not address matters of public concern. The Louisiana courts thus failed in their "constitutional obligation to assure that the record supports this conclusion," *Rankin*, 483 U.S. at 386, 97 L.Ed.2d at 325, particularly in view of the self-evident, overriding importance of the rights and duties of government employees and particularly professional engineers to inform the public of abuses of power and misconduct by their superiors.

For these reasons and for the reasons set forth in Monts' petition for certiorari, this Court should grant Monts's petition for a writ of certiorari to the Louisiana Supreme Court, should review and reverse the Louisiana Supreme Court's Order denying Monts's application in that court for writs of certiorari, mandamus, or review, and should remand the matter to the Louisiana Supreme Court "so that it may consider the contentions of the parties freed from this erroneous view of the First Amendment." *Givhan*, 439 U.S. at 413, 58 L.Ed.2d at 623.

Respectfully submitted,

Jack E. Morris
Counsel of Record
Attorney at Law
4051 Veterans Boulevard
Suite 208
Metairie, Louisiana 70002
Telephone: (504) 454-2769
Facsimile: (504) 454-3855

Counsel for Petitioner